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L. R.

CONSIDERATIONS

ON THE

RHODE ISLAND QUESTION.

BY ELISHA R. POTTER.

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CONSIDERATIONS

ON THE

QUESTIONS

OF THE

ADOPTION OF A CONSTITUTION,

AND

EXTENSION OF SUFFRAGE

IN

RHODE ISLAND.

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BY ELISHA R. POTTER. *reynolds*

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ADVERTISEMENT.

It has been the intention of the writer, at several different times during our recent difficulties, to publish some remarks upon the facts and questions at issue between the contending parties in this State ; and as, although military force is now no longer to be feared, the civil agitation of the controversy will probably be continued, and will affect, not only this, but other States—the importance of the occasion is deemed a sufficient apology for the publication. It is a subject upon which no one can pretend to originality of thought, and wherever I have found what appeared to me to be common sense, stated in strong and forcible language by others, I have used their words, and given their names ; for I would rather lose the reputation of originality, than in a matter of so great consequence to the public welfare, lose the weight of the authority of statesmen and authors of well-known and established character, in enforcing the opinions I advocate.

Kingston, R. I., September, 1842.

NOTE.—This pamphlet is now reprinted as originally published, without any omission or alteration. As it was printed so long ago it may require some little knowledge of the political history of the State—more than some of our politicians seem to have, to understand some of the allusions and references.

Kingston, September, 1879.

CONSIDERATIONS

ON THE

RHODE ISLAND QUESTION.

ON reading the remarks made upon the Rhode Island difficulties in the papers of other States, it is at once apparent to a Rhode Islander, that many of the facts are but imperfectly understood, even by those who discountenance the revolutionary movement.

The colony of Rhode Island originally consisted of four separate settlements or townships. Providence, settled in 1636; Portsmouth, March, 1638; Newport, March, 1639; and Warwick. The people of these several settlements, formed themselves into political societies by voluntary compacts. And afterwards, in 1643-4, Roger Williams was sent over to England, and obtained a patent, uniting them as one colony. This continued until 1663, when the charter was obtained from Charles II., by which the colony has always since been governed.

Upon this charter and its history we have several remarks to make before proceeding further.

First, the charter or form of government was the deliberate act of the people themselves. It was drawn by agents appointed by the colony for that purpose, and sent to England, expressly to obtain for it the sanction of the English government. That sanction was, of course, necessary to its validity, as we were then a colony dependent upon England.

Second, the charter, when obtained and brought back, was formally accepted by a vote of the whole people, assembled together, as was then the usage, at Newport.

The government was, therefore, originally established by voluntary compact of the whole people, and the present form, as settled in the charter of 1663, was also solemnly accepted and adopted by the people.

So far as the charter derived its force from the act of the king of England, (as the charter of a mere corporation,) it, of course, ceased to be of any binding force after the revolution of 1776. But as the act and compact of the people themselves, it would still remain, and the government exist under it, until changed, either by a revolution, or peaceably and legally, in such a way that it might be presumed to be done with the consent of all, of which we shall speak hereafter.

This charter only prescribed the boundaries of the colony, and the form and manner of election of the General Assembly, or legislature. All other matters were left to be provided for by the General Assembly. With the law, and practice settling the construction of it, and the usages which have grown up under it, it now forms the present constitution of the State of Rhode Island and Providence Plantations.

We have heard a great deal from declaimers about the omnipotence of the General Assembly, and it has frequently been asserted, that they have always treated the charter as a mere thing of straw, and without consulting the people, have altered it to suit their own pleasure. An examination of the cases will show, that all the instances, usually quoted to prove this, are instances where the General Assembly have interfered, either to settle a doubtful construction, or to provide for cases for which the charter had made no provision; but never to contradict its express declarations.

As, by the charter, the governor or deputy-governor and six assistants, (or senators,) had it in their power to prevent the passage of any law, and thus had a practical negative on all proceedings, an act was passed in May, 1696, providing that they should sit in a separate room and constitute a separate branch of the legislature. This was presumed to be in conformity with the spirit of the charter itself. It was adopted upon the request

of the deputies themselves. It had been considered and debated at several sessions about twenty years before, and the people had now become convinced of its propriety. In Connecticut, whose charter was like that of Rhode Island, in this respect, a similar act was passed in October, 1698, dividing their General Assembly into two branches.

By the charter, the voting for general officers was to be at Newport, "or elsewhere, if urgent occasion do require." The General Assembly afterwards authorized the people to vote at Newport, by *proxy*.

There are also a number of cases where the Assembly have passed laws to provide for the contingencies of a failure of election, death, resignation, or removal, and as to whether a majority or plurality should elect. In all these cases, it will be perceived, there was either no provision made in the charter, or there was doubt about its construction. The party against whom any such case was settled, would, of course, consider it unconstitutional.

The truth is, that the charter always has been substantially adhered to. The number of assistants or senators, the number and apportionment of deputies or representatives, the manner of the election, the whole form of the government is as of old. But as to the law-making power, the charter contained no limitations on the General Assembly. On the contrary, it expressly gave them all power. Our ancestors were a practical people. They inserted in the charter a provision requiring their deputies to be elected semi-annually. They thought this would be sufficient to prevent the legislature ever becoming the masters of the people. And time has proved their wisdom.

In June, 1732-3, the Assembly passed "an act for choosing the deputies of the several towns in this colony *annually*," with an express proviso that the act should not take effect until after another election. But so determined were the people that the charter should not be infringed upon, and of so much importance did they consider this semi-annual election, that they sent men to the next Assembly who repealed it in December, 1733. And in September, 1789, the General Assembly, by resolution, declared, that, of themselves, they had no power to alter the constitution of the State.

The government of Rhode Island, it is believed, has been prac-

tically, and in spirit if not in form, one of the most democratic in the Union. There has been no State in which changes in popular sentiment have made themselves sooner felt, owing to the frequency of elections. This has been the case to a fault. There is no State in which the rights of the poor have been so carefully guarded by securing to every one a cheap administration of justice. For it is no use to give a man rights, and then, (as is done in some of the most ultra-democratic States,) make the law process so intricate and expensive that he cannot obtain them. Our government has always been economical, because the representatives felt their responsibility to the people, and the voters were the tax payers. The Senate, elected by general ticket, always expresses the views of the political majority. Without knowing much about Pope, the people have acted on his principle, as to government, that

“That which is best administered is best.”

Instead of looking at the *form* of government as the end, and making that their ultimate aim, which is a common error in modern times, they have regarded *good* government as the end to be aimed at, and the form as essential only so far as it is more or less adapted to produce that result.*

*In the course of these remarks, I shall introduce several quotations from an able writer, Rev. O. A. Brownson, who has been much misunderstood and misrepresented, because very little read by those who have abused him. Those who will take the pains to examine the whole of what he has written upon the subject of government, and will take it together, and not by piece-meal, will not find much to condemn. And while his *democracy* will not be impeached, he will be found to be no demagogue, or flatterer of the sovereign people.

“The *ENDS* of government are determined by the law of eternal and absolute justice, and are every where and always the same. Always and every where it is obligatory on government to maintain justice between man and man, and to direct the activity of society to the common good of all its members. . . . But the *FORM* of the government is a mere question of means to an end. One form of government, in itself, is no more just and equitable than another, and no more obligatory upon a people.

Hitherto, all governments have failed to realize, in any tolerable degree, the twofold end of government designated. The American governments form no exception to this statement. They have merely demonstrated that the American people can maintain a strong and stable government without kings or nobles; nothing more. It remains to be demonstrated that they can establish and maintain wise and just governments, which fulfil their duty alike to society and the individual.” — *Boston Quarterly Review*, vol. v. p. 29.

The fact that the present government of Rhode Island is founded on a royal charter, has been seized upon by the abettors of the revolutionary movement, both here and abroad, and for want of something better, has been made an argument in their favor. A royal charter! and granted, too, by king Charles, not the very best of men!! In an appeal to popular prejudice, this might be used with great effect, and it has been done.

But as our ancestors of the first settlement were practical men, so also were those of the Revolution. When they threw off the reality of their dependence upon Great Britain, they did not waste time upon mere names. As in Virginia, a man does not think himself any less a republican because he lives in King George or Prince William counties; and as in Connecticut, before 1818, they were republicans and still lived under a royal charter, so in Rhode Island, they were content with enjoying a degree of actual liberty as great as in any country of the world, and instead of attempting to frame a government perfect in theory, they looked only to its practical effect upon their rights and happiness.* They did not hold to the idea that republicanism consisted in the constant use of certain popular words and set phrases, and that every thing was right because they, the sovereign people, did it. They appealed to a higher power to justify their motives and conduct in that eventful struggle.

It is a very common error abroad, to suppose that the charter defines the right of suffrage. The charter gave the colony power to admit as members of the political society all such persons as they should think fit. But the qualifications necessary for admission have always been prescribed by statute.

* "This charter of government, constituting, as it then seemed, a pure democracy, and establishing a political system which few besides the Rhode Islanders themselves believed to be practicable, is still in existence, and is the oldest constitutional charter now valid in the world. It has outlived the principles of Clarendon, and the policy of Charles II. The probable population of Rhode Island at the time of its reception, may have been two thousand five hundred. In one hundred and seventy years, that number has increased forty fold; and the government which was hardly thought to contain checks enough on the power of the people to endure even among shepherds and farmers, protects a dense population, and the accumulations of a widely-extended commerce. Nowhere in the world have life, liberty, and property, been safer than in Rhode Island."—*Bancroft's History*, vol. ii. p. 64.

In the recent controversy, the name of *freemen*, as applied to the voters in Rhode Island, has been a frequent theme for declamation by demagogues. The people are told that all those who are not freemen are slaves. But the charter used a word, the meaning of which was well settled in English law, and was applied to those who were admitted members of any corporation. And the word has continued in use ever since in Rhode Island, to signify the same as "electors," or qualified voters.

A property qualification has always been required under the present government of Rhode Island. By the act of March 1663-4, all persons were required to be of "competent estates," in order to be admitted to vote. There was, at that time, no need of specifying real estate, because what little personal estate was then in the colony was in the hands of those who also owned real estate. There was no need of specifying the amount, because property had not then been much subdivided. The great object was to secure the control of affairs to those who had a permanent interest in the prosperity of the colony. This qualification of "competent estates," was reenacted in 1665.

In February, 1723-4, we find the first law limiting any amount. By an act of that session, the voter was required to possess real estate valued at £100, or that would rent for forty shillings per annum, or to be the eldest son of such a voter. The eldest son was admitted, because, by the English laws, and the laws then in force here, the eldest son inherited the whole real estate of an intestate parent.

February 1729-30, the qualification was fixed at £200 of real estate, or £10 per annum. August, 1746, it was made £400 of real estate, or £20 per annum. August, 1760, £40 of lawful money, or forty shillings per annum. The digest of 1767 contains the same. In 1798, it was fixed at \$134, or seven dollars per annum.

One objection that has been made to our present system is, that the qualification is in the power of the General Assembly; that they can change it at pleasure for political purposes, and that they have done so in times past.

But on examining the facts, the reader who has heard only the common version of the story will be surprised to find, that there never has been any substantial change in the amount of

property required, and that ever since the amount was fixed in 1723-4, it has been considered as a fundamental law, not to be touched on slight occasions. Party violence has never dared to undertake to make this law bend to party purposes, any more than if it had been a part of the charter itself. It was safer in the attachment of the people to the principle, than with all the forms and ceremonies that could have been gathered around it.

All these seeming inconsistencies are easily explained by recurring to the history of the emissions of paper money made by the colonies. The qualifications of 1723-4, 1729-30, and 1746, are in old tenor, so called, the value of which was constantly depreciating. The qualification of 1760 is in lawful money, and in 1798 was merely changed into dollars, at six shillings to a dollar.

A great deal of ridicule has been cast upon the freehold qualification, and with the ignorant has probably passed for argument. It has been called the *sand and gravel* qualification, and it has been triumphantly asked, what virtue there is in a little "dirt," to qualify a man for voting. And again it is said, that if property is to qualify, the more property a man has, the more votes he should be entitled to. Those who can use such arguments must be dupes themselves, or must think their followers can be easily duped.

Our ancestors, it is to be presumed, did not intend to give the vote to the *property*, but to the *man*. The line must be drawn somewhere. The possession of real estate was supposed, in most cases, to be some evidence of intelligence, industry, and economy, necessary to acquire or preserve it. It was also supposed to furnish the best possible evidence of attachment to the State and its institutions, and an intention to make their permanent residence and home here. It was fixed so low, that every person of ordinary industry could easily obtain the amount. It was not exclusive or confined to a class, because every person who chose might bring himself within the rule.

That these were the reasons which governed our ancestors, is apparent from the whole course of their history, and the Rhode Island Convention of 1790, on adopting the Constitution of the United States, expressly declare that, "all men having *sufficient evidence* of permanent common interest with and attachment to

the community, ought to have the right of suffrage." The laws plainly show what they thought this sufficient evidence to be.

In connection with the present qualification, it may be well to refer to one charge which has often been brought against the present laws, and that is, that none but a freeholder can prosecute in the courts without obtaining a freeholder to be surety for him. This is sufficiently answered by stating the fact and the object of it. In all petty criminal cases, triable by justices, the complainant is required to give security to pay the cost if he does not succeed. In all prosecutions for larger offences, no security whatever is required. In all civil cases, the prosecutor is required to be a freeholder or to have his writ endorsed by a sufficient freeholder. This is done as much for the protection of the poor as the rich, to prevent one man suing another upon some frivolous pretence, and putting him to trouble and expense, and then leaving him to pay his own cost. It has the good effect of discouraging litigation, and, at the same time, it is believed that not a single instance can be produced, where any practical injustice has resulted from it. No one, native or foreigner, really injured, ever yet lacked a friend for a surety, for the costs in Rhode Island courts are very low.

The first question which would present itself to the inquirer considering our recent difficulties, would be—the propriety or expediency of a change.

It is too much the fashion at the present day, and in our country, to condemn all forms of government which do not square with our own notions of theoretical right, without considering the character of a people or their local circumstances. A suffrage limited only by age and short residence, is liable to objections in Rhode Island not applicable to any other State. The great disproportion between the city and the country, and the preponderance of the manufacturing over the agricultural interest, would strike the most careless observer. The fact that the government has been in the hands of the holders of property, has had the effect of making it the most economical one in the Union.

While there have been many disadvantages, it must be allowed there have been also many advantages in our being without any *written* constitution, except the charter which prescribes nothing

but the form and manner of election of the legislature. We have thus (except a few instances) been saved those endless quibbles about construction to which the best-drawn written instruments are liable, and which occupy so much of the time of congress and our State legislatures. Ours had a pliability of which a written instrument is incapable, by which it was easily adapted to any change of circumstances, while the two branches of the legislature being elected by different constituencies, and the tax payers holding the power in the last resort, were sufficient checks against any too sudden innovation. And the probability is, that if a change had been made in the representation seasonably, so as to correspond with the change in the population of different towns, no other important alteration would have been made in a long time. Inequality of representation was complained of long before extension of suffrage had many friends. That the limitation of suffrage is an oppression sufficient to justify a revolution by force, is a modern discovery.

But we do not propose to discuss these questions, because the landholders of Rhode Island, with a due regard to the change which has taken place in the population and condition of the State, have given up the question of expediency, and consented to make the alteration required. But they wish to make the change legally, and still to require some evidence of intelligence, honesty, and attachment to the State, before a person is allowed to vote.

✧ That property, although, generally, some evidence of intelligence, is not the best or the only evidence, we readily admit. In the words of one we have before quoted,—“The number properly qualified in any community, for the exercise of political power, is unquestionably small. The voice of the multitude is rarely the voice of God. But the few who are qualified, are as likely to be found among those whom [the advocates for the property qualification] would exclude from the elective franchise, as among those to whom they would extend it. The ignorant multitude are as likely to be on one side of the line as on the other; and vice is as prevalent among the rich as among the poor, and altogether more dangerous.”* ✧

* Boston Quarterly Review, vol. v. p. 30.

A qualification, depending upon taxation or military service, is liable to two serious objections: *first*, the danger of fraud, putting it in the power of party assessors and military officers, to make and unmake voters, together with the temptation to perjury; *second*, that a new agitation may be immediately commenced to obtain a further extension of suffrage, and thus the community be kept in constant excitement.

The Freemen's Convention, therefore, which formed the constitution lately rejected, wisely concluded, that when they once gave up the landed qualification, they would not stop half way. They required two years residence, only, for native American citizens. And this constitution received the hearty support of the great body of those same landholders, who have been accused of being so tyrannical and oppressive.

The question of expediency being thus waived, and the freeholders having agreed to the necessity of a change, it remains to consider the manner in which the change is to be made; and this brings us to investigate the recent attempts to effect a forcible revolution, and the reasons which have been urged in its justification.

After the Revolution, several attempts were made to have a convention called for the purpose of equalizing the representation, but they had no reference to any extension of suffrage. In April, 1782, a meeting of delegates from the several towns in Washington county, recommended to the General Assembly to call a convention for this purpose. In 1786, a bill was introduced in the House, providing that each town should have two representatives, and no more. This was referred to the people, and subsequently rejected. In 1796, a meeting at Providence, of delegates from eight towns in the counties of Providence and Bristol, recommended a constitution. At the June session of the Assembly, 1799, John Smith, of Providence, moved in the House of Representatives, to have a convention called to frame a constitution, and that there should be one delegate for every thousand inhabitants in a town. Mr. Champlin, of Newport, seconded the motion, and it prevailed by a vote of forty-four out of seventy. It was probably lost in the Senate.*

* For several of these memoranda, the writer is indebted to the Hon. William R. Staples.

In the year 1811, a bill was passed by the Senate, extending suffrage, in some degree, but never became a law. This is believed to have been altogether a political movement. In the year 1824, a constitution formed by a convention called by the legislature, remedying, in a great degree, the inequality in the representation, but retaining the old suffrage qualification; was rejected by the people. In 1834, a convention, called by the legislature for the same purpose, dissolved without doing any thing.

About this time, the whigs being out of power, some of them took up the subject of a constitution, and uniting with the friends of extension of suffrage, formed and supported a ticket of State officers, but not getting many votes, and finding it was then rather unpopular, it was dropped.

But a new element was now at work in preparing the way for revolution. The then government of the United States was unpopular with a portion of the people, and the discontented, being unsuccessful in their attempts to change their rulers in a peaceable, legal, and constitutional way, were loud in their threats of forcible resistance and even of assassination. This spirit was not confined to the poor or ignorant, but was common, and encouraged among those who claimed to be the most intelligent and patriotic of the community. And, finally, in the grand hard cider powow of 1840, instead of appealing to the understanding and sober reason of the people, the appeal was openly made to the passions and senses alone, and music and songs, processions, banners, and the machinery of stump and mass meetings, which, although common at the West, had not before got into fashion in sober New England, were made the ordinary means of electioneering, against the then national administration.

“They have sown the wind, and they shall reap the whirlwind.”

In January, 1841, the legislature passed resolutions calling another convention to meet in November, the delegates to be elected in August, by the present freemen. This was done, partly in consequence of petitions for extension of suffrage, and partly in consequence of the memorial from the town of Smithfield, which had, for several years, been endeavoring to obtain an increase of its representation.

At the spring elections of 1840 and 1841, the whigs elected

the entire Senate, and a majority of the representatives. The democrats were now out of power, and following the example which had been set them, a portion of them took up the subject of the extension of suffrage; but the public mind had become so excited by the late severe political struggles, that it could hardly be expected but that some excesses should be committed in its support.

The new agitators, recollecting the means by which the successful party had gained the last presidential campaign, concluded to make use of the same machinery of music and processions. In consequence of the recent temperance reform, they were obliged to make one omission. But they procured their music and banners, published a song-book, and on the 17th of April, 1841, commenced more active operations by roasting an ox, a calf, and a hog, whole, upon Jefferson plains.

The enterprise was well planned for success. The democrats, it was supposed, would join, because some of the leaders were democrats; and it was thought that the whigs had become so used to following music, flags, and processions, that they would fall in and join in the hurrah, as a matter of course, and without asking any questions.

On May 5, 1841, being the day of the inauguration of the newly-elected government and the meeting of the legislature, which always brings together a great concourse of people at Newport, the suffrage party held a mass meeting at that place, and appointed a State committee with directions "to call a convention of delegates to draft a constitution at as early a day as possible," independent of, and without consulting the Assembly, any further than to order their proceedings to be transmitted to them. This mass meeting was adjourned to meet on July 5, (4th being Sunday,) at Providence.

At the May session, of the legislature, they passed an act remedying the inequality of representation of the towns in the coming convention, and fixing the number of delegates.

At the same session, a motion was made by a member, to extend the right of voting for delegates to the proposed convention. He said he had been requested to propose it in order to meet the views of a considerable portion of the people. The subject was then postponed to the June session, when the motion

was rejected. But at neither session was any petition presented or any evidence whatever, offered, that any sufficiently large portion of the people demanded any change in the suffrage.

At the adjourned mass meeting of the suffrage party, July 5, at Providence, the instructions before given were reaffirmed, and, July 20, the committee met, and issued a call to the people to elect delegates, on August 28, to attend a convention to be held at Providence, on the 1st Monday (4th) of October. The committee authorized all male American citizens, (natives and foreigners, and without distinction of color,) aged twenty-one years, and who had resided in the State one year, to vote for delegates; and they fixed the number of delegates at one to a thousand, each town to have, at least, one, and Providence to elect three for each of its six wards.

It has frequently been asserted in defence of the suffrage party,* that they did not take any active measures to call a convention until after the June session, when all hope of obtaining anything from the Assembly, was gone. The foregoing facts prove the contrary. The resolutions of May 5, were in some respects cautiously worded, as the party were not then sufficiently prepared for strong measures, and it was the policy of the leaders to draw them along gradually. But they, at that meeting, expressly directed their committee to call a convention, and that committee on June 11, drew up and adopted a long address to the people, which address was published in the *New Age* of the 18th, and in which they boldly avow that they have no longer any hope of obtaining their object by the ballot box, and declare their intention to adopt the measures they have since adopted, and expressly say that, "in due time, the committee to whom that duty has been entrusted, will issue the call for primary meetings, preliminary to the call of the State Convention." All this was some days before the June session of the Assembly, (June 22d) at which the motion for extension was to be consid-

* Dr. Brown's statement to the president; and also, see comment of the Suffrage State Committee on the statement submitted to the president by Messrs. Whipple, Francis and Potter. Mr. Dorr, however, in his message to his legislature makes no such claim. It certainly cannot be said that the suffrage party continued their exertions to produce a peaceable change for any great length of time before resorting to revolution, for the Providence Suffrage Association was not formed until March, 1840.

ered. The threatening language used in the resolutions and address were not calculated to influence the General Assembly much in their favor, and were probably actually intended to have the contrary effect. The language used towards the General Assembly, in the newspaper organ of the party, had, for a long time, been very violent.

Delegates were elected to both of the conventions, and they both met at the time appointed. No opposition at all was made to these proceedings in their early stages, because it was considered by all, except the few who were in the secrets of the party, to be a mere political game designed to divide and distract the whig party, then in power. The *People's* Convention, so called, met in October, and adjourned to November, after preparing and publishing a draft of a constitution providing the same extension of suffrage as in the constitution they afterwards adopted.

This instance is enough, if there were no other, to show how much there is in a name. A few persons get together, and call themselves *the people*. And then they ask, are not the *people* sovereign? Have they not the right to do whatever they choose? It was certainly a lucky thought. Even according to their own statement, not more than 7000 persons, freeholders and non-freeholders, took any part in electing their delegates; and to make up this number, it has been said that spectators and people of all sorts were included.

The Landholders', or legal Convention met in November, prepared and published a draft of a constitution in which the right of suffrage was extended to personal property, and adjourned to February for the express purpose, as they declared, of obtaining the opinion of their constituents as to the expediency of a further extension.

The People's Convention met in November, the week after the other had adjourned and completed their constitution. The right of suffrage was extended to all white male American citizens, who were of twenty-one years of age, and had resided in the State one year.

This constitution was afterwards found to be very far from perfect. Mr. Dorr himself was fully capable of the task, but in amending and altering his plans, it was impossible but that some blunders should be made. A rather amusing instance of this

occurred when their legislature afterwards assembled. When the two houses wished to join in convention, it was found that there was no provision as to who should preside. But as they were all of one party, the matter was easily arranged.

By order of the convention this constitution was submitted "to the people," on December 27th, 28th, and 29th, in open meetings held on those three days, and every person who, "from sickness or *other causes*," did not vote on those three days, was authorized to send his vote in to the moderator, within three days thereafter.

In voting for or against the constitution, the voters were required to be American citizens, aged twenty-one, and having their permanent residence or home in the State, but without any limitation of sex, color, place of nativity, or any fixed period of residence whatever. The voters were required to say whether they were qualified by the existing laws or not.

The means adopted were almost certain to ensure the desired result. The votes were to be returned to, and be counted by the convention, who thus kept the whole matter under their own control. But they reserved the question of how many were necessary to make a majority of those whom they called the people, until their next meeting, when they would know how many votes they had actually obtained, and of what sorts. If they obtained a majority of all the males over twenty-one by the census, it would be well. If they did not come up to this, they could make a deduction for paupers, idiots, transient persons, &c. If they obtained a majority of the legal voters, or freemen, they would feel somewhat stronger. By means of the railroad and expresses the votes from all parts of the State could be reported at Providence every day during the canvass, and measures taken accordingly.

During the first three days, about 9000 votes were obtained from all sources. During the remaining three days, by the privilege given them of going about to people's houses and getting their votes, about 5000 more were brought in, making in all about 14,000. The convention met in January, 1842, counted the votes, declared them to be a majority, and their constitution to be adopted. The fact of this majority, and the motives of those who voted, we shall hereafter consider.

The question now began to be a serious one. The suffrage party felt strong from the recent vote. At the January session, 1842, the Assembly passed resolutions declaring these proceedings illegal and revolutionary, and, at the same time, in order to do every thing in their power to appease the growing excitement, they passed an act, declaring that all persons who should be admitted to vote under the provisions of the constitution to be made by the legal convention in February, should be admitted to vote for or against its adoption.

The legal convention met again in February. After the recent expression of public opinion, there could no longer be any hesitation, and accordingly, they finished their constitution, and admitted every white male native American citizen to vote who had resided in the State two years, and was twenty-one years of age, without property, taxation, or military service. Foreigners were required to possess a small freehold. On the 21st, 22d, and 23d of March, this constitution was voted for. The votes were—for, 8013; against, 8689; total, 16,702. Majority against it, 676.

The people's party exerted themselves with the utmost zeal to defeat it. Many voted against it because they were attached to the old charter, and some because they were misled by the numerous misrepresentations concerning it.

At a session of the Assembly in March, 1842, they passed an act declaring that the holding any office under the people's constitution should be considered treason. The punishment of treason, by a previous statute, was imprisonment for life. This act is called by the suffrage party the "Algerine Law." A committee also made a full report justifying the proceedings of the Assembly in relation to the extension of suffrage.

The governor afterwards appointed Messrs. John Whipple, John Brown Francis, and Elisha R. Potter to proceed to Washington, and lay the case before the president. His reply will be given in the appendix.

The subsequent movements are generally well known. In May, 1842, the old government was organized as usual, and a ticket composed of both political parties elected. The people's party also elected a governor (Mr. Dorr) and a legislature. Mr. Dorr, in May, made an unsuccessful attempt to take possession of the arsenal by military force, and in June, he assembled a

force to protect the meeting of his legislature at Chepachet, and probably for further measures. Both of these attempts he was obliged to abandon by a superior military force.

Mr. Dorr was evidently led to make these movements by the belief that all those who had voted for the people's constitution, had been in earnest, and intended to support it. There had, from the beginning, been frequent meetings of the party in all parts of the State, at which resolutions of the most violent character had been passed, pledging their lives, their fortunes, and their sacred honor, to defend their cause. Mr. Dorr undoubtedly thought that all this was sincere, and that it meant what it pretended to be, instead of being, as the event showed it was, mere common party verbiage. There was a considerable number of persons in military array, who would probably have assisted him in case any attempt had been made to arrest him. He was mistaken, however, in supposing that they were prepared to follow him in taking possession of the public property, or attacking the established government.

In June, 1842, the General Assembly determined to make another attempt to appease the excitement, and satisfy the suffrage party. They passed an act calling a convention to meet in September. The delegates were to be elected in August, and three years' residence was required, without property, taxation, or military service, to qualify persons to vote for delegates. And in order to make the representation in the convention more nearly proportioned to population than it was in the Assembly, they fixed upon a scale which gave Newport four delegates, and Providence six, thus inverting the present ratio. It is hoped the result of this convention may be to give peace to the State.*

It has been objected to the new convention act, that the apportionment of the delegates is unequal. But it should be recollected that it is an attempt at a compromise, and it certainly cannot but be considered as a very liberal advance towards reconciliation on the part of the existing government.

The issue now is between the old and established government,

* It has been asserted, that the General Assembly did not pass this act until they were driven to it by the news of the gathering at Chepachet. It should be stated, that the terms of the bill had been agreed upon at an informal meeting of the members, the bill had been introduced and printed, and had actually passed the Senate, before the news arrived at Newport.

and any constitution which may be made under their authority on the one part, and the people's constitution, under which Governor Dorr acts, on the other.

We come now to consider the reasons put forth to justify the recent attempt at revolution; and these resolve themselves into questions of principle and questions of fact,—whether the majority of the people have the right assumed, and whether a majority was ever actually obtained.

The first question is, whether a majority of the whole people, without reference to any existing laws regulating the right of voting, have a right to change the government at any time and in any manner they choose: for this is the position taken.

In whatever may be said upon this subject, we do not wish to be understood as denying what may be called the right of revolution, or the right of any portion of the people who are oppressed to redress their grievances by force, after having tried all peaceable means without effect. But this is a right which belongs not to majorities only, but to any number of citizens, however small, who are oppressed, where the oppression is sufficient to justify it, and there is no mode of redressing it but by a revolution. For engaging in such a cause every man has to account with his own conscience and his God. If the change now attempted had been called a revolution, it would have been rightly named, and then no one would have been deceived by it. But the ground taken is, that the majority can legally and constitutionally change the government at any time and in any manner; or, in other words, that their supremacy in *all* things is a fundamental principle of republican law. It has been sometimes called, strangely enough, the doctrine of peaceable revolution. By believing it to be rightful and legal, and that it would be peaceable, hundreds have been misled who would never have countenanced it if called by its right name.*

* “I have heard much of late about the right of revolution, and there is no doubt but that, in those cases where a people, by the oppression and violence of their rulers, are thrown upon the natural right of self-preservation, this right exists, may be exercised, and a revolution be justified; but however justifiable it may be, we should always recollect, that, if it be revolution, it *is* revolution, and nothing but revolution. There is no possibility of making it half revolution, and half not. If you resort to revolution, you must adopt it with all its consequences, be they never so calamitous.”

It is very plain, that if they can disregard the laws established by society in one instance, they can in any other. If they have a right to depart from the law which regulates the qualification of voters, they have an equal right to depart from the laws which regulate boundary lines. They are all alike results of the institution of society, and without society they would have no existence. The boundary line between Connecticut and Rhode Island is merely an artificial line established by a treaty or law. What, upon the doctrine in question, is to prevent a portion of the people of Connecticut from joining with a portion of the people of Rhode Island and forming a new State? If you answer that this boundary line was a compact between two societies, established by our ancestors, and, therefore, binding on us, you grant all I ask. But what is to prevent the majority of the people of Washington county setting up for themselves? Why should not the people of Long Island separate from New York? The majority of the people of the northern part of Illinois would perhaps like to join Wisconsin, and thus get out of debt. What is there to prevent continual changes of this sort, upon the doctrine in question? You will answer, the Constitution of the United States would prevent the erection of new States or alteration of old ones, without consent of congress. But if the majority of the people of Rhode Island have a right to change their own government in this manner, they have an equal right to throw off the government of the Union; for they both stand upon the same foundation, a compact made by our forefathers. And again; upon the new doctrines, the Constitution of the United States was never legally adopted, and is not binding, for a majority of the whole people never assented to it, and in almost

ous. These calculations are to be made at the commencement of it, and weighed against the evils which it is proposed to remedy. . . .

Strong heads and patriotic hearts, doubtless, gave the first impulse to the French revolution; but does not the progress and issue of that bloody drama tell us that those abstractions, (in which they so freely dealt,) whatever might be their theoretic truth, became false and fiendish in their application? Do we not know that the very masses which were engaged in carrying them out, rejoiced when the iron rule of military despotism came, to deliver them from themselves, and from the incarnate demons which the movement had conjured up.

When all men are angels, and of the same order, these abstractions may be true in all their consequences, but never in their application to man as he is."—*Chief Justice Durfee's Charge.*

all the States at the time of its adoption, there were great restrictions upon suffrage. Further, what is to prevent a majority of the whole people of the Union, without regard to the lines of States, from changing the Constitution of the Union, and making us one consolidated nation? If the majority, without reference to laws, have this right in Rhode Island, the majority of the United States have it also, and so on; for boundary lines are but laws, the artificial institutions or results of society. These, it may be said, are all idle fears, but they are submitted as the legitimate consequences of the reasoning of the revolutionists, if carried to their full length in practice.

The more we consider these things, the more reason we shall see in the old-fashioned doctrine, that a change of government can only take place in one of two ways,—legally, with the consent of the existing government, or by a revolution, brought about by force, or the fear of force. They may actually prevail in conflict, or they may exhibit such strength as to awe the minority into submission without conflict. In either case, it would be a revolution, and not a legal change. The doctrine of peaceable legal revolution was a discovery reserved for this enlightened age and people.

We are either an organized society, or we are not. If we are not, then we should be in a state of nature, and a majority could have no right to bind us, for in that state no one man would have a right to govern another. If we are members of an organized political society, then we are as much bound by one of its laws as another, until they are legally changed, or until the oppression is so great that the duty of self-preservation compels them to appeal from the laws of society to the laws of humanity. To hold the contrary, is to give to a majority the power to turn might into right, and to confound moral distinctions.*

* "Democracy, in the sense we are now considering it, is sometimes asserted to be the sovereignty of the people. If this be a true account of it, it is indefensible. The sovereignty of the people is not a truth. Sovereignty is that which is highest, ultimate; which has not only the physical force to make itself obeyed, but the moral right to command whatever it pleases. . . .

"Are the people the highest? Are they ultimate? And are we bound in conscience to obey whatever it may be their good pleasure to ordain? If so, where is individual liberty? If so, the people, taken collectively, are the absolute master of every man taken individually. Every man, as a man, then, is an absolute slave. Whatever the people, in their collective capacity, may demand of him, he must feel himself bound in conscience to give. No matter how intolerable the burdens imposed, painful and needless the sacrifices required, he cannot refuse obedience, without incurring the guilt of disloyalty; and he must submit in silence, without even the moral right to feel that he is wronged.

If we are not an organized society, if the State does not constitute a quasi corporation, how can we bind ourselves by a treaty, how can we incur a debt for posterity to pay? It has, heretofore, been thought reasonable, that as a new generation takes possession of a country, with all the advantages derived from the labors and accumulations of their ancestors, they should also take upon themselves their burdens. But if a bare majority have a right

"Now this, in theory at least, is absolutism. Whether it be a democracy, or any other form of government, if it be absolute, there is, and there can be, no individual liberty. . . .

"But this is not the end of the chapter. Under a democratic form of government, all questions which come up for the decision of authority, must be decided by a majority of voices. The sovereignty which is asserted for the people, must then be transferred to the ruling majority. If the people are sovereign, then the majority are sovereign; and if sovereign the majority have, as Miss Martineau lays it down, the absolute right to govern. If the majority have the absolute right to govern, it is the absolute duty of the minority to obey. . . . We hold our property, our wives and children, and our lives even at its sovereign will and pleasure. It may do by us and ours as it pleases. If it take it into its head to make a new and arbitrary division of property, however unjust it may seem, we shall not only be impotent to resist, but we shall not even have the right of the wretched to complain. . . . The creed the majority is pleased to impose, the minority must, in all meekness and submission, receive. . . . Whatever has been done under the most absolute monarchy, or the most lawless aristocracy, may be re-enacted under a pure democracy, and, what is worse, legitimately, too, if it be once laid down in principle, that the majority has the absolute right to govern.

"The majority will always have the physical power to coerce the minority into submission; but this is a matter of no moment, in comparison with the doctrine which gives them the right to do it. We have very little fear of the physical force of numbers, when we can oppose to it the moral force of right. The doctrine in question deprives us of this moral force. . . . It is not the physical force of the majority that we dread, but the doctrine that legitimates each and every act the majority may choose to perform. . . .

"The effects of this doctrine, so far as believed and acted on, cannot be too earnestly deprecated. It creates a multitude of *demagogues* pretending a world of love for the *dear people*, landing the people's virtues, magnifying their sovereignty, and with mock humility professing their readiness ever to bow to the will of the majority. . . . It generates a habit of appealing, on all occasions, from truth and justice, wisdom and virtue, to the force of numbers, and virtually sinks the man into the brute."—*Boston Quarterly Review*, vol. i. pp. 37—40, 47.

Mr. Brownson then proceeds to explain what is all that can really be meant by the sovereignty of the people, and its limitations.

"There is among us a strong tendency to sweep away every institution, every organic form whether in the executive, judicial, or legislative branches of the government, which may have heretofore interposed an obstacle to the free and full expression of the irresponsible will of the majority. Every amendment proposed or adopted of any of our civil constitutions, has a direct tendency to throw additional power into the hands of the party, which chances to be in the majority, and to remove some safeguard from the minority. The whole spirit of the American people, not of one party only, is to sweep away all barriers to the establishment of absolute democracy, which shall cause the government in its administration to feel and respond to every wave of public opinion or popular caprice. This is easily accounted for, and is by no means an unnatural tendency; but it is, perhaps, time to inquire, whether it is likely to lead, and whether it is likely to increase the security we demand for individual rights."—*Ibid.*, vol. iv. p. 279.

See Mr. Brownson's remarks on the folly of that portion of the democracy, who wished to change or abolish the Senate, merely because it for a while opposed some measures of their favorite, General Jackson.—vol. iv. p. 367.

"We hold ourselves among the foremost of those who demand reform, and who would live and die for progress; but we wish no haste, no violence in pulling down old institutions, or in building up new ones. We would *innovate boldly in our speculations*, but, *in action*, we would *cling to old usages*, and *keep by old lines of policy till we were fairly forced by the onward pressure of opinion to abandon them*. We would think with the radical, but often act with the conservative. When the time comes to abandon an old practice, when new circumstances have arisen to demand a new line of policy, then, we say, let no attachments to the past make us blind to our duty, or impotent to perform it. All we say is, let nothing be done in a hurry, and let no rage for experiments be encouraged."—*Ibid.*, vol. i. p. 73.

to alter the government in any manner they please, and without reference to the qualifications required by the laws, if laws or compacts of government made by our forefathers are of no binding force, then for the same reason, one generation could never bind another, in any respect, and treaties would be ties of straw, and debts go unpaid; old-fashioned notions of honesty would have to be laid aside. The connection between these doctrines is nearer than would be at first supposed.

If, then, a majority can ride over or depart from the law in one instance, without resorting to the required forms of law for its repeal, there is the same reason for their right to do it in all. They may equally disregard boundary lines, laws making compacts or treaties, and laws for contracting debts. They may do all this by force, I admit, and then the justification will depend upon the nature of the case. What I object to is, its being called legal or right, merely because it is the will of the majority.

But it is asserted (and this is at the bottom of the whole difficulty) that every man has a natural right to vote, to participate in the government, and more especially in the formation of a constitution. As ordinarily stated, this position is self-contradictory. In an "address to the people of Rhode Island,"* in 1834, this claim of natural right is stated in the ablest manner of which it is susceptible. The facts and arguments of the suffrage party have never been more ably or candidly stated than in this address. It indeed contains the germs of all the principles and arguments since advanced by Mr. Dorr, and by the party.

Page 26,—“We contend, then, *that a participation in the choice of those who make and administer laws is a natural right, which cannot be abridged nor suspended any farther than the greatest good of the greatest number imperatively requires.*” (Italicised in original.)

Strictly speaking, any thing cannot be a natural right, which, in a state of nature, would have no existence, and which is wholly and solely the result of the establishment of society, as government and the making of laws is.

If the address means that the just object of government is to secure to every individual as great a degree of liberty, both of

* The historical parts of this pamphlet, were contributed by Joseph K. Angell, Esq., the statistics by William H. Smith, and the remainder, including all the argumentative part, by Thomas Wilson Dorr, Esq.

thought and of action, as is consistent with the good of the whole, that is, of society, and that the greater the number of individuals who participate in the administration, the greater the security that the measures of the government will be for the good of the whole, instead of consulting only the welfare of the few, we presume its correctness would be generally admitted.

It is very fashionable to talk about "the greatest good of the greatest number."* But, while the good of the many ought not to be sacrificed to the good of the few, on the other hand, the welfare of a minority ought not to be sacrificed even to the greatest good of the greatest number. This savors too much of submitting every thing to the will of the majority. All laws should be for the greatest good of the whole society.

A practical difficulty then arises, who are to be excluded from political power, and who are to decide upon the exclusion. The writer of the address himself, is obliged to admit that this exclusion from, or abridgment of the right of suffrage is a question of expediency, and that, if the public good requires any one to be excluded, the exclusion is right.

Address, pages 28-9,—“As a general rule, then, government was first formed by the act and with the consent of those who were to be governed, given either expressly or by acquiescence. And what did government confer upon those who established it? Here lies the radical error of those who contend that all political rights are the creatures of the political compact. Those reasoners will tell you about rights created by society. We wish to ask previously, what those rights were which existed before political society itself. Those rights were the rights to life, to liberty, to property—in general, to the pursuit of happiness. Another great personal right already alluded to, has been reserved for the last; *it is the right which every man among the families by which nations were composed, had, of giving or withholding his voice in every question relating to the union of those families in a form of government; and of removing from its jurisdiction if that union were formed against his consent.* The existence of such a natural right is too evident to be disputed. This right is the very *right of suffrage* which is the burden of our

* Judge Upshur's Address, p. 21.

present enquiry, and which we call a natural right. *Political society could not confer that right or power upon its members by the exercise of which it first came into existence.* In other words, man, in the exercise of his natural rights, made government, and government did not give to man his rights." (Italicised as in original.)

This is a singular example of confusion of ideas, and of the inconsistencies to which a very able man is driven, in supporting such a case. He here confounds two things which are entirely separate and distinct: *first*, the right which every man had, before society was formed, to say, whether he would join it or not, and which, in fact, is the only natural right of suffrage; *second*, the right of participating in government after the society is formed, the right to vote, which right depends entirely upon laws which the society makes, with a view to the good of the whole. We will not argue as to whether society can, with propriety, be said to *confer* this second right. It is sufficient to say, that society entirely excludes some from it and gives it to others, and that, without society and the law, the right would have no existence. If society does not *confer* it, nature certainly does not.*

The meaning of this paragraph of the address, however, would seem to be that the second right is a continuation of the existence of the first; to which view the foregoing remarks also apply in answer.

The distinction is easily illustrated by an instance of an ordinary agreement. The right of a man to enter into an agreement, is perfectly distinct from the rights which he has under and by virtue of the agreement when made.

The address also contends, that society does not create any new rights; but only protects and regulates those which man would have in a state of nature; and gives, for an instance, the

* "Natural and civil rights cannot be enjoyed at the same time. We must give up the one to attain the other." "This leads us to the correction of that opinion which has been maintained by so many philosophers, that men resign part of their natural rights, to obtain security for the remainder, by substituting for it the proposition, that men give up to the community a part of their natural rights to acquire civil rights. From this same principle it follows, that the opinion that society, in the administration of right, grants nothing to any of its members, is not well founded. For in the civil state, which is deemed the same as the social state, by the administration of the government, the members do acquire certain positive rights, which they can enjoy only in a civil state, and which are, therefore, to be considered as the gift and the offspring of social institutions."—*Judge Swift*, vol. i. p. 16.

right of property. But the right of property cannot certainly be called a natural right. For, in the imaginary state of nature, a man could only hold any thing in two ways: *first*, by force, which it will not be contended could make a right; *second*, by consent, which very consent is the essence of, and constitutes society. The right to a thing is not a physical quality of the thing itself. It is only an agreement, or law, by which each is obliged to abstain from that which another has acquired. It is a right only in reference to other men. It presupposes more than one. It can only originate in agreement, a union of men, or society, and is regulated and controlled by government, when a government is established. Even now, things which are common, belong to the first occupant, only by general consent, which is a rule tacitly agreed upon for the general good. In one sense, it is true, that both property and society may be called natural, since we are, evidently, designed by our Creator, for both.*

There is a great deal of very weak argument on the subject of the rights of man in a state of nature. The phrases—right, state of nature, and natural rights, are very ambiguous, and may mean very different things. Perhaps we may fall into errors from this same source. But if people will argue from this imaginary state of nature, we must consider their arguments, and endeavor to ascertain what weight is due to them.

The address, it will be seen from the preceding extracts, admits, that previous to society, every man would have a right to say, whether he would join the society or not, and that no one could rightfully compel another to join it. Of course, in a state of nature and before society was formed, a majority could have no rights, whatever, over the minority. After a society is formed, which may be either by express compact, or tacit agreement, they may give the direction of their affairs to a king, to an aristocracy, or to a majority; but this can only be by virtue of the agreement, or, in the language of our Declaration of Independence, “the consent of the governed,” and not from any divine right of kings and aristocracies, or any natural right of majorities.

Government, or society may, in one sense, be said to be a divine institution, and may, also, in one sense, be called natural;

* Puffendorff, vol. iv. lib. iv. ch. 11, and vol. iv. lib. iv. ch. 4, sec. 5. Rutherford's Institutes, lib. i. ch. 3, sec. 7.

but how a *majority* can be said to have any rights, either divine or natural, is difficult to see. They can have none but what the constitution or fundamental compact, and the laws give them.

But, again it will be seen, that as far as Rhode Island is concerned, these arguments from a state of nature, about the natural right of every person to share in the formation of government, must proceed upon another assumption, that we are now in a state of nature, and have no organized society, or lawful government, to which the citizens are in any manner bound. They do, in fact, assume, that the present government of Rhode Island was never adopted by the people.

Now, we either have a society or social compact already instituted, we have a lawful government, or we have not; and are in this, so called, state of nature without any government. If we are not members of an organized society, then, from what has been said before, a majority have no right to govern at all, no other right but the revolutionary right of force. If we are members of an organized society, then a majority has no right but such as the existing constitution and laws give them. If, by the original, or existing constitution, the whole people have agreed that that constitution shall be altered by a majority, then a majority may alter it, but it is because the whole people have given them that power, and for that reason alone. If they have not given them that power, as in Rhode Island, then the right remains in the whole people. Governments were instituted for the protection of the whole people, for majorities can generally protect themselves. How the consent of the whole people is to be expressed, we shall consider presently. A change of government made in any other manner, may be a revolution, but cannot be called legal.

To the assertion, that every person has a natural right to share in the government, or to vote, the common and obvious answer is—if this is a natural right, why do you, at one blow, exclude one half of all society, the females; why do you exclude minors, colored persons, and the *poor*?*

In answer to this, the address says, (p. 31,) “The first part of the objection, regarding minors, proves too much for the ob-

* It is an observation of Burke, that by requiring any qualification at all, you exclude the poorest, and those who most need protection. Vol. iii. p. 198.

jectors; for, as the minor is debarred from the full enjoyment of the right of property also, until the age of twenty-one years, it might be argued with equal show of reason, that there is no natural right of property; for which right, the objectors strenuously contend."

This might answer very well as an "*argumentum ad hominem*," to a man who believed the right of property to be a natural right, but if the remarks we have made upon this point are correct, this reply can avail nothing.

The writer in the address allows, that some men are as well qualified to vote before twenty-one, as others are above that age; and he then proceeds to defend the exclusion of minors upon what is, in fact, the only true ground, expediency, or the public good, and the necessity of prescribing general rules, and refers to the universal practice of all civilized nations as its justification.

In relation to the exclusion of women, Mr. Dorr rests its justification, (p. 31,) "upon a just consideration of the best good of society including that of the sex itself," and upon "their own assent."

To the remark, that in many of the free suffrage States a property qualification is required to be elected to office, the reply is, (p. 49,) "it is a sufficient answer to the objectors to say, that where the distinction does exist, it was made by the people themselves in their original sovereign capacity."

Thus are all those who reason from the rights of nature, obliged themselves to come back at last to the old doctrine, that the question, who shall share in the political power or administration of the government, is to be decided from expediency or considerations of the public good. And this question, in case of forming a government where none existed before, must be settled by all the parties to the social compact. In case of a government established by tacit consent or acquiescence, or by force, it must be decided by those in whose hands the power of the State already is. If any are oppressed, they have their appeal to the bar of public opinion, and the good sense of the people seldom fails, (though sometimes slowly) to redress the injury. If all peaceable means fail, and the oppression is sufficient to justify it, there remains the sacred right of revolution.

But it will be said, even allowing that a majority of all the

men over twenty-one years of age, qualified and unqualified, had no power to change the government in this manner, the people's constitution received the votes of a majority of the freemen or qualified voters under the existing laws. The fact we will afterwards inquire into, and will now consider the present form of the assertion, that a *majority* of the *qualified voters* have a right to change the government at any time, and in any *manner* they choose, without consulting either the government or the minority.

We are very apt to get our notions of the rights of majorities from our common practice of governing by majorities. After a government is formed, and the republican form adopted, as with us, and the power is placed in the hands of a body of men, instead of one or a few, the universal rule and practice is, that in the administration of the laws and deciding all ordinary cases, the will of the majority shall be considered as the will of the whole body. This is the only practicable rule in managing the affairs of an organized body of a number of men, and is adopted either expressly, by rule, or tacitly, by consent, from the necessity of the case; but then this majority must act according to the rules and fundamental laws upon which the government itself was organized. It is from seeing that the administration of the government in our country in all its details is carried on by majorities, and this constantly going on before our eyes, that some come to imagine that there is some peculiar power inherent in, or natural to a majority, and that, as a republican principle, they have a right to change the government itself.*

If any number of us were to meet to form an association for any purpose whatever, a majority would have no right to control

* See Brownson's remarks on the manner in which majorities are usually managed. "These measures and candidates are rarely determined on by the spontaneous voice of the whole party. They are determined on by the few more active partizans, usually designated party leaders. These cut and dry the policy of the party. The party may not approve this policy, but it must adopt it, or endanger its success, and give ascendancy to the opposite party; which will generally be regarded as the greater evil of the two. A majority of the more active members of the party, therefore, adopt what their leaders propose, pass resolutions in its favor, and rally the whole party to its support. The party, we will suppose, succeeds, elects its men, and carries its measures. Are these measures really carried by the majority of the whole people? Are they, in truth, expressions of the actual will of the majority? Not at all. They are, in truth, only the expressions of the will or the policy of the active minority of the party, which is itself but a lean majority of the whole people. If the actual opinion of those who, in both parties, are really opposed to them, could be collected, you would not unfrequently have an overwhelming majority against them. In point of fact, what we call the decision of the majority in this country, is rarely any thing more than the decision of the active or adroit minority which controls the party, that, for the time being, chances to be in the ascendant. Universal suffrage, then, coupled with universal education, cannot secure even the expression of the will of the majority, to say nothing of giving us assurance that the will of the majority shall always be just and right."—*Boston Quarterly Review*, vol. iv. p. 281-2.

the rest in forming the articles of association, but when once the association was formed, if there were no express rules for managing its business, we should "naturally" that is, from the necessity of the case, adopt the rule of majorities. We should adopt it as a rule of convenience. And this is the only connection we know of between nature and a majority.

Much of what we have said before will apply to the right now claimed for a majority of the qualified voters. A majority, whether of qualified or unqualified voters, can have no legal, constitutional, or conventional rights but such as the constitution or social compact gives them;* and government being formed by the whole people for the protection of minorities as well as majorities, when once instituted it can only be changed by the whole people, or in such manner as they have agreed it shall be changed.

There having been in Rhode Island no particular way designated for changing the constitution, and the whole people never having given to a majority the right to make such a change, it would follow, that the majority in Rhode Island could not make the change. But, on the other hand, to require the consent of every individual to a change, would render change impossible. The existing government having been established by the whole people, and representing the whole people in their social capacity, minorities as well as majorities, they having delegated to it all political power, without limitation; when this gives its consent to the change, the consent of the whole people is given in the only practicable way it can be.

But it may be said, if no change can be legally made without the consent of the legislature, it may be prevented forever. Interested minorities may obtain the control of the legislature. True, such cases may happen, and we do not maintain that this or any other theory is entirely free from objections. But the theory of the legal or constitutional right of the majority to change, *in any manner* they choose, is liable in our view to fatal objections.†

* See the very able remarks of Judge Upshur (now secretary of the navy,) on the rights of majorities, page 66 of the Debates of the Virginia Convention: and also in an Address delivered by him, July 2, 1841, before the literary societies of William and Mary College, page 23.

† "An opinion which saps the foundation of all authority, which destroys all power, and, consequently, all society, cannot be admitted as a principle of reasoning or of conduct, in politics."—*Burkhamague; Principles of Natural and Politic Law*, vol. ii. lib. ii. ch. 6, sec. 8.

In the case of the people's constitution, a few persons without any legal right whatever, took upon themselves to call a convention, and to say how many delegates each town should have, and who should vote in choosing those delegates. It was managed in the same way a party caucus or convention is generally managed.

A portion of the people chose delegates, and the convention thus assembled, made a constitution, and assumed the power to call town-meetings, and, strangest of all, assumed that highest attribute of sovereignty, the right to decide who should be admitted to vote in adopting that constitution. There was, of course, no challenging of votes or legal means of detecting or punishing fraud,—the rest of the people considering the proceedings illegal, took no part in them; and these persons, without any election or oath of office, then proceed to count the votes in their own way, and declare the result to be the adoption of their constitution.*

Now it is plain, that if the law is out of the case, mere numbers cannot add to the right; that is, if five or ten men can call a convention, one man has as good a right; and if fifty or a hundred men without legal authority can make a constitution, and say how it shall be adopted, one man has the same right; for there is no law either of nature or of society which limits the number necessary to be concerned in such an undertaking. This, we believe, the friends of the people's constitution generally admit: they maintain, that it is the adoption of the constitution by a majority, which alone gives it validity, and that it is of no consequence how it is proposed.

But who is to settle who the sovereign people are? Those who proposed the people's constitution, limited the right of voting upon its adoption to American citizens, (which, of course, requires five years residence in the United States,) over twenty-one years of age. They did not expressly exclude females, but if females are to be counted, there can be no pretence that they obtained a majority. Now what upon the theory in question, is

* These votes were at first offered for examination to the General Assembly, and lists of the voters in several of the towns were furnished to individuals who applied. Afterwards, all access was refused to them. It is obvious that the legislature cannot examine them without yielding the question of right; and private individuals are not now permitted to. So that they are effectually shut up from public scrutiny.

there to prevent any private individual framing a constitution and proposing it to the people, and asking females to vote upon it—for he would have the same right to do it, the People's Convention had. We have now a large party among us contending for women's rights. What would prevent this being done every day, as new notions arose and became popular? Why could not a majority of a religious sect establish their creed in a constitution? Religious liberty is a part of our social compact in Rhode Island, if any thing is. They may, even now, do this by force, but we are speaking of constitutional right.

If these positions are followed out in all their consequences, it would be seen that, upon such grounds, there could be no permanence in any form of government whatever; and a government without some degree of permanence is no government at all. It may be said, indeed, that, in practice, these changes would not be frequent, that the people are not apt to change unless there is some great cause to move them. But where is the security for this? Our country is, from time to time, swept over by excitements, political and religious, the advocates of which, while the fever is up, are very apt to think that the salvation of the republic depends upon the adoption of their particular notions. If a majority have not only the might, but can make right, what hinders these things?

People will never undertake a *revolution* unless there be good cause; but once established that the majority have the legal and peaceable right now claimed, and that they can overturn not merely the ordinary laws, but the government and constitution itself, by putting a piece of paper in a ballot-box, or *sending in* their vote to any self-constituted meeting, and there is nothing to prevent changes being attempted every day, and the community would, of course, be kept in constant agitation by a few heated partizans.

These remarks are sufficient to show that, in order to change the government legally and constitutionally, it is not only necessary that the existing government should give the consent of the whole society, and that a majority should act, but that the will of that majority should be legally and constitutionally expressed in the manner pointed out by the existing constitution and laws.*

* "I think I give you a true description of a state, when I say, that a state is a legally

Otherwise there can be no security against fraud whatever, except the *ipse dixit* of these self-elected canvassers of the votes. And even then, we should be obliged to have recourse to physical strength, to settle all questions of doubt, so that we should, in reality, gain nothing by the adoption of the new doctrine.

In the monarchical governments of Europe, there is such an aversion to all change which shall lessen the power or the privileges of the ruling few, and there is so much oppression in them, that perhaps it is natural the tendency here should be to the other extreme.

There are, indeed, two parties among the advocates of the new doctrines. One party go the whole length, we have described, and maintain, that even if there is a mode pointed out for amending the constitution, that the majority are not bound by it, but can alter it in any manner, and at any time they choose. Another portion claim the right, because, they say, there is, in Rhode Island, no way of amending our constitution, but still hold that, if there was a mode prescribed, the people would be bound by it, as a compact. The legislature, they say, has no power to call a convention. Let them show, if they can, that

organized people, subsisting, as such, from generation to generation, without end, giving through the forms of law, the wills of the many to become one sovereign will. It is a body politic, qualified to subsist by perpetual succession and accession. . . . There is, and from the nature of things, there can be no sovereign people without law; without that unity which the law gives them whereby they are enabled to act as one; and consequently, there can be no sovereign will that is not expressed through the forms of their corporate existence. . . . A sovereign will is a unit, is a mere legal entity; it has nowhere in any civilized countries any existence independent of law. In the constitutional monarchies of Europe, it has a mere legal existence; hence the legal maxim in England, that the king never dies, and can do no wrong. The moment that the sovereign will ceases to be a legal will, and becomes a mere personal will, you have nothing but a master, and a body of slaves; you have no state at all, but only the semblance of one."—*Chief Justice Durfee's Charge.*

"The basis of our political systems is the right of the people to make and alter their constitutions of government; but the constitution which, at any time exists, until changed by an *explicit and authentic* act of the *whole people*, is sacredly obligatory upon all. The very idea of the power and right of the people to establish government, presupposes the duty of every individual to obey the established government.

"All obstructions to the execution of the laws, all combinations and associations under whatever plausible character, with the real design to direct, control, counteract or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle, and of fatal tendency. They serve to organize faction, to give it an artificial and extraordinary force, to put in the place of the delegated will of the nation, the will of a party, often a small, but artful and enterprising minority of the community; and according to the alternate triumphs of different parties, to make the public administration the mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans, digested by common counsels and modified by mutual interests.

"However combinations and associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious and unprincipled men will be enabled to subvert the power of the people, and to usurp for themselves the government; destroying afterwards the very engines which have lifted them to unjust dominion."—*President Washington's Farewell Address.*

the existing government of Rhode Island is not a *government* in the full meaning of the word, and the only mode in which the whole people can be represented and exercise their whole political power, which they have delegated to it without limit.

We have seen in the statement in the beginning of these remarks, that what, in most cases, is theory only, was, in our case, a fact: that there was truly, a social compact. Rhode Island was composed of separate settlements, each of which was formed by a voluntary compact, and after being united for a while by compact, again separated, and then again united, and in order to prevent future divisions, appointed agents to England, who drew up the charter of 1663, and obtained its ratification from Charles II.; that this charter was not only the work of the people in the outset, but was solemnly accepted by the whole people in mass. Thus did the people of Rhode Island, the whole people, establish a government.

But it is said, that this charter, being derived from the English king, was annulled by the Revolution, and that we are now without any government which has ever received the sanction of the people, or been adopted by them; in a word, that it is only a government by force and sufferance, no rightful government at all. This argument would defeat its own purpose, for if our former social compact was dissolved, and we have now no legal government at all, how could a majority bind us? But, for the reasons we have just mentioned, this view cannot be sustained. The charter was not only the act of the king, but it was also the act of the people themselves. So far as it was the act of the king, the Revolution put an end to his authority. But, inasmuch, as it was the act and compact of the people and the whole people, it remained with binding force, and was confirmed by universal consent and acquiescence. The object of the Revolution, was not to dissolve society into its original elements, but only to separate one organized society or nation, from another which oppressed it.

The argument is destructive in another point of view. Rhode Island has no legal government, because the Revolution put an end to the old social compact, and no new government was ever established by the people, or according to their doctrine, by a majority—then, by the same course of reasoning, the Constitu-

tion of the United States was never legally adopted by Rhode Island, for, as only qualified freemen voted for the convention which adopted it, a majority of the people never sanctioned it; and even if a majority had sanctioned it, such a majority could not bind us, unless we had a valid constitutional compact of our own, by virtue of which, a majority would have such a right.

In arguing upon the doctrines of natural rights, we are aware, that we are arguing, in a great measure, upon mere theory; that the so called state of nature is mostly imaginary, and that governments, in the greater number of cases, instead of being the creatures of express compact, have been the results of conquest, or prescription. But our opponents argue from natural rights, and we are obliged to meet them upon their own grounds. The origin of some of our American governments, comes as near the idea of a strict, social compact, as perhaps ever happened. They actually entered into agreements, (and sometimes in writing,) to form themselves into societies. And, as a new generation grows up, they are, from the necessity of the case, presumed to give their consent by their acquiescence to become members of the society; and it is in this view, that it is most beautifully and expressively called by Coleridge, an "ever originating" compact.

There is another argument nearly connected with the preceding, and which, from the frequency with which it is used, must be considered, by the revolutionary party, a strong one. They say, the Constitution of the United States guarantees to every State, a republican form of government. They then argue, (or generally assume,) that the present government of Rhode Island is not republican.

They may mean, that the government of Rhode Island never was republican, or that it has, by some later change, lost its republican character.

That the government of Rhode Island was considered as republican within the meaning of the constitution, at the time the State joined the Union, requires but little evidence to establish. The fact of admission into the Union proves this. If it was not then republican, few of the States had republican governments at that time, for, in the greater part of them, the right of suffrage was very much restricted, and several of them had

never been confirmed by express acts of the whole people subsequent to the Revolution. Mr. Madison (Federalist, No. 43, p. 236,) observes, "The authority extends no further than to a *guaranty* of a republican form of government, which supposes a preëxisting government of the form to be guarantied. As long, therefore, as the existing republican forms are continued by the States, they are guarantied by the Federal Constitution. Whenever the States may choose to substitute other republican forms, they have a right to do so, and to claim the federal guaranty for the latter."

In determining what constitutes a republican government, we must look to its meaning as it was understood by the wise men who formed our constitution, and not to the notions of modern theorists and visionaries. Mr. Madison (Federalist, No. 39, p. 204,) gives us his definition: "If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or, at least, may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is *essential* to such a government that it be derived from the great body of the society, not from an inconsiderable proportion or a favored class of it; otherwise, a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honorable title of a republic." And in another place (No. 10, p. 53,) he defines a republic to be a "government in which the scheme of representation takes place," "the delegation of the government to a small number of citizens elected by the rest," distinguishing it from a pure democracy.

Now let us hear Mr. Dorr's definition in the Address before referred to, (p. 23.) "It is one of the essential parts of the definition of a republican government or representative democracy,* that it is a government resulting from the will of the majority, ascertained by a just and equal representation."

If there is any force in this definition, there is not a State in

* Judge Swift observes, that a *representative democracy* is a contradiction in terms. Vol. i. p. 21.

the Union which is at this time a republic, for in almost all of them there is more or less inequality of representation. In Vermont, and Connecticut, the representation is fixed without any regard to population whatever. In Connecticut, Hartford has 12,793 inhabitants, New Haven, 14,390, and there are many towns of under 700 inhabitants; and yet each of the old towns has two, and the new towns one representative each. In Vermont, several towns have over 3,000, while there are several of under 500 inhabitants; and yet every town has one representative and no more.* Of course, upon the new theory, these are aristocracies, and will have to be reformed.

The assertion, that Rhode Island has not a republican government, must refer either to the fact that it has no written constitution except the charter, or to the fact, that there is some inequality in the representation, or to the assertion, that a majority of citizens of lawful age are excluded by the present laws from a share in political power.

Our present charter derives all its validity from the act of the people; and instead of the legislature being the masters of the people, as is frequently asserted, by one branch being elected semi-annually, they are more dependent on the people than the legislature of any other State, and they exercise their power only as representing the whole people, the sovereign people. Until 1818, Connecticut was in a similar situation, and had no constitution whatever, except a royal charter from this same graceless Charles II.; and Judge Swift observes, (*System*, vol. i. p. 55,) "Some visionary theorists have pretended, that we have no constitution because it has not been reduced to writing, and ratified by the people. It is, therefore, necessary to trace the constitution of our government to its origin, for the purpose of showing its existence, that it has been accepted and approved of by the people, and is well known and precisely bounded." Connecticut was, like Rhode Island, composed of different settlements, each

* In these States, the Senate is the more popular branch, but even there the representation is not strictly according to population, but is subject to several limitations. Vermont has fourteen counties, and there are to be thirty senators, of which each county is entitled to one, and the rest are to be distributed to those counties having the greatest fractions. By the constitution, Grand Isle county, which has by the last census a population of 3,800, had one senator, and Windsor county, which, by the last census, had 40,300 inhabitants, had only four senators. What the new apportionment is I know not. In districting the Senate of Connecticut, there is a nearer approach to a ratio of population, but even there, there are considerable inequalities.

of which was formed by express compact, and which were afterwards united together. "The application of the people for this charter, and their voluntary acceptance of it, gave efficacy to the government it constituted, and not the royal signature." He then proceeds to observe, that so far as it was the mere act of the king, a royal charter, it lost its force after the Revolution.

The doctrine which makes perfect equality of representation essential to the definition of a republic, proceeds upon the ground that numbers alone are to be considered in the formation of a constitution—a doctrine destructive of all good government. It is confounding republican and democratic, two very distinct things. It has always been thought wise in framing constitutions of government, so to frame them as to protect all the different interests of the State, and to prevent any one from preponderating over, and swallowing up, all the rest. These interests may be pecuniary, civil or religious, sometimes general, and sometimes local; and of whatever sort, are salutary checks upon each other. Regard is also to be had, in distributing representative numbers, to the greater or less degree of power, of combination, and facility of acting in concert.

In all our State governments the supreme power is vested in more than one body, generally in a Senate and House of Representatives, and in concurrence with the executive; and these different branches are elected by different constituencies. This is done to provide checks on power, and to prevent hasty and inconsiderate legislation. But another and most important view of the propriety of this division of power and difference in the manner of election, is taken by Mr. Calhoun in his speech of February 28, 1842, and which will be best expressed in his own words. "What, then, is to be done, if neither the majority nor the minority, the greater nor less part, can be safely entrusted with the exclusive control? what but to vest the powers of the government in the whole, the entire people; to make it, in truth and reality, the government of the people, instead of the government of a dominant over a subject part—be it greater or less—of the whole people, self-government; and if this should prove impossible in practice, then to make the nearest approach to it, by requiring the concurrence in the government of the greatest

possible number consistent with the great ends for which government was instituted, justice and security, within and without. But how is that to be effected? not certainly by considering the whole community as one, and taking its sense as a whole by a single process, which, instead of giving the voice of all, can give but that of a part. There is but one way by which it can possibly be accomplished; and that is, by a judicious and wise division and organization of the government and community with reference to its different and conflicting interests, and by taking the sense of each part separately, and the concurrence of all as the voice of the whole. Each may be imperfect in itself; but if the construction be good, and all the keys skillfully touched, there will be given out in one blended and harmonious whole, the true and perfect voice of the people. . . . Regarding them separately, neither [branch] truly represents the sense of the community, and each is imperfect in itself; but when united, and the concurring voice of each is made necessary to enact laws, the one corrects the defects of the other; and instead of the less popular derogating from the more popular, the two together give a more free and perfect utterance to the voice of the people than either could separately.” “The great question is, how is due preponderance to be given to the power of the majority without subjecting the whole, in time, to its unlimited sway? which brings up the question, is there any where in our complex system of government, a guard, check, or contrivance, sufficiently strong to arrest so fearful a tendency of the government? Or to express it in more direct and intelligible language, Is there any where in the system, a more full and perfect expression of the voice of the people of the States, calculated to counteract this tendency to the concentration of all the powers of the government in the will of the numerical majority, resulting from the partial and imperfect expression of their voice through its organs? Yes, fortunately, doubly fortunately, there is; not only a more full and perfect, but a full and perfect expression to be found in the constitution, acknowledged by all to be the fundamental and supreme law of the land. It is full and perfect, because it is the expression of the voice of each State, adopted by the separate assent of each, by itself, and for itself; and is the voice of all, by being that of each component part, united and blended into

one harmonious whole. But it is not only full and perfect, but as just, as it is full and perfect; for, combining the sense of each, and therefore all, there is nothing left on which injustice, or oppression, or usurpation, can operate." The necessity and advantages of having the different branches of the law-making power elected by different constituencies and different interests, so that, when a law is enacted by their concurrent voice, it shall not express the will of a mere tyrannical majority, but shall express the voice, as nearly as practicable, of the whole, by thus collecting the sense of the whole through the subordinate parts, are dwelt upon by Mr. Calhoun in this and other places.*

As to the assertion, that, by the present laws, a majority of American citizens, of lawful age, are excluded, the fact has always been denied.† Besides, the law does not exclude them. It is in their power to bring themselves within the qualification. Mr. Dorr, himself, admits the necessity of acting upon general

* "Appeals to patriotism and philanthropy will always make you most effective as an orator or a writer; but patriotism and philanthropy, when carried to the polls, or into the legislative hall, are identified by each man, with the special protection by government of his peculiar interest. Patriotism and philanthropy with the planter, are in his cotton bags; with the farmer, in his wheat field; with the manufacturer, in his spindle and loom; with the banker, in his notes, and with the merchant, in his ship or counting-room. What most benefits me, is most patriotic and for humanity. No government will work well that does not recognize this fact, and which is not shaped to meet it, and counteract its mischievous tendency."—*Boston Quarterly Review*, vol. v. p. 36.

"To make the constitution, is not to draw up the written instrument, but to organize the body politic, to constitute its several powers; and if we really intend it to be a constitution, so to organize the State as to always have a negative power capable of arresting the positive power whenever it is disposed to exceed the bounds prescribed to it. The constitution, then, must virtually consist in the manner in which the different interests, classes, sections, or natural divisions of the community, are organized in relation to the government. . . . The whole people, through the majority, are the positive power, the governing power; the negative power must be sought in the parts, and secured by so organizing the parts, that each part, when an oppressive measure is attempted, may have an effectual veto on the action of the majority or positive power."—*Ibid*, vol. v. p. 44.

"To introduce some distinction of the kind, some contrivance for taking, in addition to the sense of the absolute majority, the sense of the natural divisions of the community, is, and should be the aim of every statesman. . . . The contrivance must vary with localities, and the peculiar habits, tastes, customs, and pursuits of the community. The same contrivance will not answer for every community. Nor can it any where be arbitrarily introduced."—*Ibid*, vol. iv. p. 287.

"Many things are thought to be democratic, against which a wise statesman will set his face. It is not democracy we want, but good government, a government which secures to each individual by effective guaranties, the free and full enjoyment of all his natural rights. These guaranties, which are the substance, may be lost while we are in pursuit of abstractions and theoretic unity, which are often but mere shadows. All good government is founded on compromise, and is more or less complicated. To simplify it is nothing but to render it absolute."—*Ibid*, vol. iv. p. 288.

"We repeat to them what we never cease to repeat, and what we have ever occasion to repeat, that between popular sovereignty, and individual liberty, there is a wide difference; and that, to clear the way for the free, unobstructed dominion of the people as civil society, is but clearing the way for anarchy or despotism."—*Ibid*, vol. iv. p. 368.

"The ordinary power of government and legislation in a government like ours, is the will or assent of the majority. Now if this same majority make the constitution, or may unmake it at will, the constitution can, at best, impose but a temporary check on its will. . . . Then the constitution is nothing but what the majority choose to make it, and, consequently, we are just as much under the absolute majority, as we should be in case we had no constitution."—*Ibid*, vol. iv. p. 284.

† See Appendix.

rules. Universal suffrage prevails nowhere. It is restricted, more or less, in every State. It is, therefore, merely a question of expediency and degree, as to where the line shall be drawn. The government was, in fact, established by the great body of the people, and continued and confirmed by their repeated consent and acquiescence; and it is contended, and confidentially believed, by many, that those who are actually qualified to vote now, constitute a majority of the male population over twenty-one, after excluding foreigners, transient persons, lunatics, paupers, &c. If Rhode Island is not a republic for these reasons, upon what ground can the other States, and especially the southern ones, stand?

It would almost seem as if Mr. Madison had been endowed with the spirit of prophecy. He has anticipated the case of Rhode Island. *Federalist*, No. 43, p. 237:—"At first view, it might not seem to square with the republican theory, to suppose that a majority have not the right, or that a minority will have the force to subvert a government, and, consequently, that the federal interposition can never be required but when it would be improper. But theoretic reasoning in this, as in most other cases, must be qualified by the lessons of practice. Why may not illicit combinations, for purposes of violence, be formed, as well by a majority of a State, especially a small State, as by a majority of a county or a district of the same State? . . . May it not happen, in fine, that the minority of *citizens* may become the majority of *persons* by the accession of alien residents, of a casual concourse of adventurers, or of those whom the constitution of the State has not admitted to the right of suffrage?"

Federalist, No. 10, p. 50:—"By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion or interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community. . . . When a majority is included in a faction, the form of popular government enables it to sacrifice to its ruling passion, or interest, both the public good, and the rights of other citizens."

The case of the admission of Michigan into the Union, is often quoted in support of the late movement in Rhode Island. *All* the facts connected with it are seldom stated.

Michigan, being a Territorial government, the Territorial legislature, January 25, 1835, passed "An act to enable the people of Michigan to form a constitution and State government," in pursuance of which, a constitution was formed by a convention of the people at Detroit, in May, 1835.

By the act of congress, of June 15, 1836, "to establish the northern boundary line of the State of Ohio, and to provide for the admission of the State of Michigan into the Union upon the conditions therein expressed," certain conditions, as to boundary lines, &c., were prescribed to be complied with, or assented to, before their admission. The act required that these conditions should "receive the assent of a convention of delegates elected by the people of said State for the sole purpose of giving the assent herein required," and upon such assent being given, the president was to declare it by proclamation.

In accordance with this act, the legislature, under the State constitution, called a convention, which met at Ann Arbor, September, 1836, and *rejected* the conditions.

In December, 1836, a convention of delegates, elected by the people of their own motion, and called by no legal authority, met, and voted to accept the conditions. The proceedings were communicated to President Jackson, who laid them before congress, and Michigan was admitted.

Michigan was, at this time, without any government at all, recognized by congress. Congress would not recognize them as a State, until they had been admitted, and did not recognize their legislature as having any authority to call a convention, or their constitution as having any validity whatever. Furthermore, the act of congress required, that the assent should be given by a convention of delegates, elected by the people, and did not prescribe any particular manner in which the convention should be called or elected.

All these facts were stated, and the points made, in the letter from the president of the convention to President Jackson. The act, he says, "does not designate any power or authority known among the people of the State, whether executive or legislative, by which such convention of delegates should be called together for acting on the premises. The condition prescribed as a preliminary to the admission of Michigan into the Union,

had not, until now, been complied with, and no absolute recognition of our State authorities had been made by any branch of the national government. The Territorial executive had been withdrawn, the Territorial legislature had ceased, and no power remained as recognized by congress, but the people of Michigan in their sovereign capacity, by which the convention of delegates should be called to yield compliance with the fundamental condition of admission as provided in the second section of the act of congress. Had the third section of the said act designated by whom or by what power the said convention should be ordered, the mode would have met the cheerful compliance of the people of Michigan; but an *implied* recognition of our constitutional authorities by congress, is not justified in the whole scope of the act aforesaid, and might be deemed too broad a construction, bearing on a question so vitally important to the people of Michigan. Left, then, to ourselves, we have considered it proper, respectfully, and as a full compliance with the spirit of the third section of the act of congress of June 15, 1836, to originate with and from the people themselves, through the expressed sanction of our executive, the convention of delegates required by said act."

At the regular election for State officers in November, after the first convention, the question of assent or dissent to the conditions required by congress, was made the test question. Having, in this way, fully ascertained the views of the people, the calling of another convention was recommended by primary meetings, elections for delegates were held, which were conducted in all respects, as the ordinary elections, and the votes were canvassed and counted by the county boards, as in other cases, according to the Territorial law.

The convention themselves, in the act declaring their assent, express themselves in the preamble thus: "whereas, no authority or power is designated in said act of congress by which said convention of delegates shall be called or convened; but in the third section of said act, the right of the people of Michigan to elect said delegates without any previous action of their constituted authorities, is clearly recognized and manifest, and whereas, this convention originated with, and speaks the voice of a great majority of the people of Michigan;" &c.

Upon these grounds, and under these circumstances, Michigan

was admitted. Some of the members did, indeed, in their speeches, express very radical opinions, and many of them were, doubtless, influenced by party motives, as it was during a most violent contest for the presidency. And even if it had been decided upon the ground of right alone, the two cases are not similar, for Rhode Island has an established government recognized by the United States, and Michigan had no government at all recognized by congress, and no government was subverted in this case by the action of the majority.

Many quotations are brought by the advocates of the people's constitution, from various legal writers, to support their claims. But, upon examination, the greater part of them may be reduced to two classes: first, the greater part assert that the theoretical "sovereignty" resides in the people, the whole people, and that they have a right to resume the powers of government, and to alter or change the constitution; a position which is asserted in almost all the State constitutions, and which no one denies: secondly, quotations from writers who were treating of the constitutions of States, where the existing constitution already gave the majority the right to alter it. In some, also, the right is asserted for the majority, in vague and indefinite language, as a matter of physical strength, a sort of revolutionary right, while, in fact, the right of revolution belongs to oppressed minorities as much as to majorities.

The revolutionary party in Rhode Island have obtained a great deal of sympathy abroad, from several circumstances. They have assumed the name of "the people," to cover all their doings, and claim to be the exclusive advocates of extension of suffrage, and of the doctrine of the "sovereignty of the people," against what they represent as the tyranny of a landed aristocracy.* Besides the advantage which their assuming a popular name has given them, they have derived much assistance from the assertion, too readily believed abroad, that the present government was resisting, by all the means in its power, any extension of suffrage; an assertion sufficiently refuted by the statement of facts before given. They have taken good care to mix together

* The freeholders of Rhode Island, nine-tenths of whom are very far from being wealthy, must have been as much surprised to find that they had been *aristocrats* all their lives without knowing it, as the man in the play was, when he made the discovery that he had been talking prose all his life without knowing it.

the questions of extension of suffrage, and the right of the majority, well knowing that the former would find friends every where in other States, and that the latter would stand in some need of assistance. But now, that the established government has yielded all their demands as to extension of suffrage, only requiring residence, without any property qualification or even payment of taxes,—and the question of the right of the majority is left to stand upon its own merits,—it is to be hoped that it will receive the careful and anxious consideration of all who feel an interest in the *permanence* of republican institutions. The doctrine may be destined to become popular and prevail, because it has the appearance of being democratic; but its consequences appear to lead—and that at no very distant period—to centralization and despotism.

A P P E N D I X .

No. 1.

DR. PALEY ON THE RIGHT OF REVOLUTION.

Dr. Paley, after examining the doctrine of compact, and rejecting it on the ground that it is theory only, and dangerous in its application, proceeds to give his own views of the duty of submission to government, as founded on “*the will of God, as collected from expediency.*”

“The steps by which the argument proceeds are few and direct. ‘It is the will of God that the happiness of human life be promoted;’ this is the first step, and the foundation, not only of this, but of every moral conclusion. ‘Civil society conduces to that end;’ this is the second proposition. ‘Civil societies cannot be upheld, unless in each, the interest of the whole society be binding upon every part and member of it;’ this is the third step, and conducts us to the conclusion, namely, ‘that so long as the established government cannot be resisted or changed without public inconveniency, it is the will of God (which will universally determines our duty) that the established government be obeyed,’ and no longer.

“This principle being admitted, the justice of every particular case of resistance, is reduced to a computation of the quantity of the danger and grievance on the one side, and of the probability and expense of redressing it on the other.

“We proceed to point out some easy, but important inferences which result from the substitution of *public expediency* into the place of all implied compacts, promises, or conventions whatsoever.

“I. It may be as much a duty at one time to resist government, as it is at another to obey it; to wit, whenever more advantage will, in our opinion, accrue to the community from resistance, than mischief.

“II. The lawfulness of resistance, or the lawfulness of a revolt, does not depend alone upon the grievance which is sustained or feared, but also upon the probable expense and event of the contest. They who concerted the revolution in England, were justifiable in their counsels, because, from the apparent disposition of the nation, and the strength and character of the parties engaged, the measure was likely to be brought about with little mischief or bloodshed; whereas, it might have been a question with many friends of their country, whether the injuries then endured and threatened, would have authorized the renewal of a *doubtful civil war*.

“III. Irregularity in the first foundation of a State, or subsequent violence, fraud, or injustice in getting possession of the supreme power, are not sufficient reasons for resistance after the government is once peaceably settled. . . .

“IV. Not every invasion of the subject's rights, or liberty, or of the constitution; not every breach of promise, or of oath; not every stretch of prerogative, abuse of power, or neglect of duty by the chief magistrate, or by the whole, or any branch of the legislative body, justifies resistance, unless these crimes draw after them public consequences of sufficient magnitude to outweigh the evils of civil disturbance. Nevertheless, every violation of the constitution ought to be watched with jealousy, and resented *as such*, beyond what the quantity of estimable damage would require or warrant; because a known and settled usage of governing affords the only security against the enormities of uncontrolled dominion, and because this security is weakened by every encroachment which is made without opposition, or opposed without effect.

“V. No usage, law, or authority whatever, is so binding that it need or ought to be continued, when it may be changed with advantage to the community. The family of the prince, the order of succession, the prerogative of the crown, the form and parts of the legislature, together with the respective powers, office, duration, and mutual dependency of the several parts, are

all only so many *laws*, mutable like other laws, whenever expediency requires, either by the ordinary act of the legislature, or if the occasion deserve it, by the interposition of the people.”—*Moral Philosophy*, lib. vi. ch. 4.

In the latter clause, it is to be recollected, that Paley is referring to the condition of England, where, in theory, the parliament is omnipotent, and has power to change not only the ordinary laws, but the form and component parts of the legislature itself, which in England are mere laws or acts of parliament. We have also observed elsewhere, that the government of Rhode Island, and some of the other States, were originally compacts made by the whole people; and that, therefore, in this country, the doctrine of compact is not always a mere theory.

No. 2.

PRESIDENT TYLER'S FIRST LETTER.

To His Excellency, the Governor of Rhode Island:

SIR:—Your letter, dated the 4th inst., was handed me on Friday by Mr. Whipple, who, in company with Mr. Francis and Mr. Potter, called upon me on Saturday, and placed me, both verbally and by writing, in possession of the prominent facts which have led to the present unhappy condition of things in Rhode Island;—a state of things which every lover of peace and good order must deplore. I shall not adventure the expression of an opinion upon those questions of domestic policy, which seem to have given rise to the unfortunate controversies between a portion of the citizens and the existing government of the State. They are questions of municipal regulation, the adjustment of which belongs exclusively to the people of Rhode Island, and with which this government can have nothing to do. For the regulation of my conduct, in any interposition which I may be called upon to make, between the government of a State and any portion of its citizens who may assail it with domestic violence, or may be in actual insurrection against it, I can only look to the Constitution and laws of the United States, which plainly

declare the obligations of the executive department, AND LEAVE IT NO ALTERNATIVE AS TO THE COURSE IT SHALL PURSUE.

By the fourth section of the fourth article of the Constitution of the United States, it is provided, that the United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on the application of the legislature, or executive, (when the legislature cannot be convened,) *against domestic violence*. And by the act of congress, approved on the 28th February, 1795, it is declared—that in case of an insurrection in any State *against the government thereof*, it shall be lawful for the President of the United States, upon application of the legislature of such State, or of the executive, (when the legislature cannot be convened,) to call forth such number of the militia of any other State or States as may be applied for, as he may judge sufficient to suppress such insurrection. By the third section of the same act, it is provided that, whenever it may be necessary, in the judgment of the president, to use the military force hereby directed to be called forth, the president shall forthwith, by proclamation, command such insurgents to disperse, and retire peaceably to their respective abodes, within a reasonable time.

By the act of March 3, 1807, it is provided, “that in all cases of insurrection or obstruction to the laws, either of the United States or any individual State, or Territory, where it is lawful for the President of the United States to call forth the militia for the purpose of suppressing such insurrection, or of causing the laws to be duly executed, it shall be lawful for him to employ, for the same purposes, such part of the land or naval force of the United States as shall be judged necessary, having first observed all the prerequisites of the law in that respect.”

This is the first occasion, so far as the government of a State and its people are concerned, on which it has become necessary to consider of the propriety of exercising these high and most important constitutional and legal functions. By a careful consideration of the above-recited acts of congress, your excellency will not fail to see, that no power is vested in the executive of the United States to anticipate insurrectionary movements against the government of Rhode Island, so as to sanction the interposition of the military authority, but that there must be an actual

insurrection manifested by lawless assemblages of the people or otherwise, to whom a proclamation may be addressed, and who may be required to betake themselves to their respective abodes. I have, however, to assure your excellency, that should the time arrive, (and my fervent prayer is that it may never come,) when an insurrection shall exist against the government of Rhode Island, and a requisition shall be made upon the executive of the United States to furnish that protection which is guarantied to each State by the Constitution and laws, I SHALL NOT BE FOUND TO SHRINK FROM THE PERFORMANCE OF A DUTY, WHICH, WHILE IT WOULD BE THE MOST PAINFUL, IS, AT THE SAME TIME, THE MOST IMPERATIVE. *I have also to say that, in such a contingency, the executive could not look into real or supposed defects of the existing government, in order to ascertain whether some other plan of government proposed for adoption was better suited to the wants, and more in accordance with the wishes of any portion of her citizens. To throw the executive power of this government into any such controversy, would be to make the president the armed arbitrator between the people of the different States and their constituted authorities, and might lead to an usurped power, dangerous alike to the stability of the State governments and the liberties of the people.*

It will be my duty, on the contrary, to respect the requisitions of that government which has been recognized as the existing government of the State through all time past, until I shall be advised in regular manner, that it has been altered and abolished, and another substituted in its place, by legal and peaceable proceedings, adopted and pursued by the authorities and people of the State.

Nor can I readily bring myself to believe that any such contingency will arise, as shall render the interference of this government at all necessary. The people of the State of Rhode Island have been too long distinguished for their love of order and of regular government, to rush into revolution, in order to obtain a redress of grievances, real or supposed, which a government under which their fathers lived in peace, would not in due season redress. No portion of her people will be willing to drench her fair fields with the blood of their own brethren, in order to obtain a redress of grievances which their constituted authorities cannot, for any length of time resist, if properly

appealed to by the popular voice. None of them will be willing to set an example, in the bosom of this Union, of such frightful disorder, such needless convulsions of society, such danger to life, liberty and property, and likely to bring so much discredit on the character of popular governments. My reliance on the virtue, intelligence and patriotism of her citizens, is great and abiding, and I will not doubt but that a spirit of conciliation will prevail over rash counsels, that all actual grievances will be promptly redressed by the existing government, and that another bright example will be added to the many already prevailing among the North American republics, of change without revolution, and a redress of grievances without force or violence.

I tender to your excellency assurances of my high respect and consideration.

JOHN TYLER.

Washington, April 11, 1842.

No. 3.

PRESIDENT TYLER'S SECOND LETTER.

To the Governor of the State of Rhode Island :

WASHINGTON CITY, MAY 7, 1842.

SIR:—Your letter of the 4th inst., transmitting resolutions of the legislature of Rhode Island, informing me that there existed in that State “certain lawless assemblages of a portion of the people,” for the purpose of subverting the laws and overthrowing the existing government, and calling upon the executive “forthwith to interpose the power and authority of the United States to suppress such insurrectionary and lawless assemblages, and to support the existing government and laws, and protect the State from domestic violence,” was handed me, on yesterday, by Messrs. Randolph and Potter.

I have to inform your excellency in reply, that my opinions as to the duties of this government to protect the State of Rhode Island against domestic violence, remain unchanged. Yet, from information received by the executive since your despatches came to hand, I am led to believe that the lawless assemblages to which reference is made, have already dispersed, and that the danger

of domestic violence is hourly diminishing, if it has not wholly disappeared. I have with difficulty brought myself at any time to believe, that violence would be resorted to, or an exigency arise, which the unaided power of the State could not meet; especially as I have, from the first, felt persuaded, that your excellency, as well as others associated with yourself in the administration of the government, would exhibit a temper of conciliation as well as of energy and decision. To the insurgents themselves it ought to be obvious, when the excitement of the moment shall have passed away, that changes achieved by regular, and, if necessary, repeated appeals to the constituted authorities, in a country so much under the influence of public opinion, and by recourse to argument and remonstrance, are more likely to ensure lasting blessings than those accomplished by violence and bloodshed on one day, and liable to overthrow, by similar agents, on another.

I freely confess, that I should experience great reluctance in employing the military power of this government against any portion of the people; but, however painful the duty, I have to assure your excellency, that if resistance is made to the execution of the laws of Rhode Island, by such force as the *civil posse* shall be unable to overcome, it will be the duty of this government to enforce the constitutional guarantee—a guarantee given and adopted mutually by all the original States, of which Rhode Island was one, and which, in the same way, has been given and adopted by each of the States since admitted into the Union. And if any exigency of lawless violence shall actually arise, the executive government of the United States, on the application of your excellency, under the authority of the resolutions of the legislature already transmitted, will stand ready to succor the authorities of the State in their efforts to maintain a due respect for the laws. I sincerely hope, however, that no such exigency may occur, and that every citizen of Rhode Island will manifest his love of peace and good order, by submitting to the laws, and seeking a redress of grievances by other means than intestine commotions.

I tender to your excellency assurances of my distinguished consideration.

JOHN TYLER.

No. 4.

EXAMINATION OF THE FACT OF THE MAJORITY CLAIMED FOR
THE PEOPLE'S CONSTITUTION.

Its advocates claim that the people's constitution received the votes of a majority of American citizens in the State, over twenty-one years of age, and also a majority of the legally qualified freemen. In proof of this, they appeal, first, to the return and canvass of the votes by their own convention in January; and, secondly, to their having succeeded in defeating the landholders', or legal constitution, as it was called, in March, 1842. Let us examine both these assertions.

The circumstances, under which the vote was given for the people's constitution, in December, 1841, have already been stated. The party was supposed to have for its object extension of suffrage alone, and few, at least, in the country part of the State, except its leaders, suspected any ulterior design. A great number, therefore, who were sincerely in favor of extension of suffrage, gave their votes for it as a mere expression of their opinion, never thinking that the constitution could go into effect. That this was the case with a great number, we think will appear from the reasons we shall offer presently.

But it has, also, been charged, that there were great frauds committed in taking the vote; and it certainly offered great facilities for fraud. There was no challenging of votes, because the opposite party refused to take any part in it. The voting was, for the first three days, in open town-meeting, and then, for the three following days, all the active friends of the cause exerted themselves in going around and procuring the signatures of as many as they could, and sending in their names to the moderators. Between four and five thousand were obtained in this way, in the last three days.

The census of 1840 makes the number of free white males in the State, over twenty-one years of age, as near as can be computed, 25,674; free colored males, over twenty-four years of age, 668. In calculating the number necessary to make a majority, a deduction of 3,000 has generally been made from this, for foreigners not naturalized, paupers, &c.

The greatest number of freemen who ever voted at any election, was 8,622, at the presidential election, in November, 1840. But, in the country towns especially, the population is scattered, and there is seldom a full attendance, and, by calculating the number of voters and of absentees in several towns, and applying the same ratio to the State, the number of legally qualified voters, under the old laws, has been variously estimated at from eleven to twelve thousand. The number of freemen, claimed to have voted for the people's constitution, is 4,960. On the tickets, which they voted, were printed the following words: "I am — qualified to vote according to the existing laws of the State." And it has been said, that a great many of the non-freeholders forgot to insert the *not*.

In the town of Newport, they have long been charged with committing the greatest frauds, and the reason they have never attempted to disprove these charges is, probably, because they could not be refuted. They claimed to have obtained 1,207 votes for the people's constitution, of whom they say 317 were freemen.

In making up the whole number of 1,207, they took the names of the soldiers at the United States fort, of the people at work for the government at Fort Adams, and of people who had been, for a long time, gone to sea, or absent from the State. And, from an actual and careful examination of the list of their voters, it is estimated by a person, who is probably better qualified to judge than any other man in that town, that not more than 750, at most, out of the 1,207, were qualified to vote even upon the very liberal terms of the people's constitution, which admitted foreigners to vote for it, and required no specific period of residence. And when, only three months afterwards, in March, 1842, the vote was taken upon the legal constitution, and every person, who had resided in the State two years, was admitted to vote, and only foreigners and the transient population excluded, the people's party, notwithstanding they brought every man to the polls, could only obtain 361 votes against it. Here is a falling off from 1,207, when they took the vote in their own way, to 361, when it was taken in legal town-meeting, where the votes were challenged, and the transient population excluded.

And both parties together, at this same town-meeting, could only obtain 1,091 votes, while the people's party claimed to have obtained for theirs, 1,207 votes.

Again; they claim to have obtained, in Newport, 317 freemen for the people's constitution. The same gentleman, before referred to, who personally knows almost every freeman in the town, estimates that at least ninety of these were no freemen at all. And, of the others, a great number voted merely as an expression of opinion, and some for party purposes. How else, if there was no fraud, can it be accounted for, that in the legal town-meeting, where the very same freemen voted, subject, however, to a legal scrutiny, that this vote fell off from 317 to 102, and that both parties together could only obtain 475. The town-meeting of December, the people's party had all their own way. The other was conducted according to law, although the same people voted, and every effort was made on both sides.

Such frauds as these would be most likely to be committed in the cities and large manufacturing towns, such as Newport, Providence, Smithfield, Cumberland, Warwick, &c. In a great many of the country towns, the vote was probably very fairly conducted.

The convention, on counting their votes, declared the whole number, freeholders and non-freeholders, to be 13,944; and that their constitution was adopted by a majority of the American citizens over twenty-one.

The people's party did, indeed, offer all their votes to the examination of the General Assembly, and it has been triumphantly proclaimed abroad, that the Assembly, by refusing to receive or examine them, had waived all right to dispute the fact of a majority. But it is to be recollected, that the General Assembly considered all the proceedings illegal, and they could not receive the votes without giving up the principle they contended for. The fact of their being a majority, has always been denied by the other party.

The People's Convention, at their meeting, January 13, 1842, by resolution, authorized the secretaries to copy any part of the registry of the votes, or of the votes themselves, upon the application of any person. Several individuals, accordingly, obtained lists of those who had voted in their own towns, and commenced

examining them. But a stop was soon put to this, and, at a meeting of some of the suffrage party in Providence, they actually undertook to overrule the orders of the convention of the sovereign people; countermanded this authority, and prohibited any more copies being given. How they can justify this, even upon their own loose principles of government, remains to be seen.

Thus the General Assembly cannot examine the votes without yielding the principle contended for; and private individuals are not permitted to. They are thus effectually secured against examination.

The next vote which has been appealed to as a test, is the vote on the landholders' constitution in March, and it is contended, that the defeat of this constitution, amounted to a reaffirmance of the vote on the people's constitution.

Soon after the vote on the people's constitution, the legal convention completed theirs. It extended suffrage to all native American citizens, upon two years residence, without any property or tax qualification. Foreign born citizens were required to possess a freehold. All who could vote under the constitution, were authorized to vote for or against its adoption.

The "people's" party resolved to attempt the defeat of the legal constitution. The contest was of the most exciting character. The like of it has not been in Rhode Island within the writer's recollection. The result was, for the constitution, 8,013; against it, 8,689; total, 16,702. Majority against it, 676.

Now, let us examine of what materials this number of 8,689, was composed. A large number of the freeholders voted against the constitution, because they were opposed to so great an extension, and some, because they were opposed to any constitution at all. A large number of people in the northern part of the State opposed it, because too much strength in the Senate was given to the southern counties. Still more were influenced by the misrepresentations circulated, in relation to the right of fishery. They were told, that the legal constitution abridged, or took away their rights on the shore, and their rights of fishery. There was no part of the constitution that was not fully discussed, and every possible objection urged to suit different localities and prejudices. In allowing 1,500 to have voted from all

these considerations, we think we are very reasonable. There would then remain, 7,189. What a falling off from the 13,944, who are said to have voted for the people's constitution, in December, 1841, only three months previous !

But, even all of these 7,169, did not vote against the legal constitution, because they wished the people's constitution to become the law of the land. It cannot be denied, for it was industriously circulated, and the impression was generally produced, that, as the whigs had a majority in the freemen's convention, the legal constitution was so framed, that its adoption would secure the power of the State to the whigs, or the aristocracy. It was considered as a whig measure, and great numbers of democrats voted against it for no other reason. And a report was circulated in the south part of the State, that Governor Fenner and Governor Francis, men who stood high in the confidence of the democratic party, had voted for the people's constitution. It is almost needless to say, the report was false; but numbers were influenced by it.

But even if no deductions are to be made at all, if the whole 8,689, were supporters of the people's constitution, where were the rest of the 13,944? No exertion was spared to bring every one of their men to the polls, every argument was used, and every passion appealed to, as the files of the suffrage newspaper will show, and the people, in all parts of the State, were aroused and excited by means of paid lecturers, for several weeks preceding the election. The prejudices of the poor against the rich, were openly appealed to. The falling off can only be accounted for in another way. We have said, that, at the voting for the people's constitution, there was no challenging of votes, for there was no officer who had authority to administer an oath, and no means of preventing fraud, and also, that a considerable number put in votes for it, merely as an expression of opinion in favor of free suffrage, and not meaning that it should ever be the supreme law of the land. But in voting for the legal constitution, both parties were present, the votes were challenged, the closest scrutiny applied, and the foreign population, and transient persons, (of whom there is a very great number, manufacturing being the leading business of the north part of the State, and the government works employing a great many at Newport,)

were excluded. All these had probably voted for the people's constitution. Besides, all those who had voted for the people's constitution, merely as an expression of opinion, now came forward and voted for the legal constitution, because it provided a very liberal extension.

Here, then, even taking the whole number, the friends of the people's constitution, in March, in a town-meeting, *conducted according to law*, and where the voting was confined to the *permanent* population, could only muster 8,689 votes, just about one-third of the male population over twenty-one. So much for this second test of their majority.

The number of freemen claimed to have voted for the people's constitution, in December, was 4,960. The number of freemen who voted against the legal constitution, in March, was about 2,680, from examinations of the records made by the town-clerks of the several towns. Here, too, is a large falling off, which can only be accounted for in a similar manner.

The vote for State officers, in April, 1842, was no test of anything. On the charter election-day, Governor King and his ticket, received 4,916 votes from both political parties. General Carpenter was voted for by the qualified voters of the suffrage party, and by a considerable number of democrats, and received 2,392 votes. As these elections were under the old law, none but freeholders voted. There was no serious opposition, and the strength of neither party brought out. On their election-day, the people's party put in over 6,500 votes for Mr. Dorr, as governor. There was no opposition, of course, but yet considerable exertion was made to get their voters out, in order to make a show of numbers.

We will close this examination of the question of the majority, by observing, that the famous nine lawyers, in their Statement of Reasons, in defence of their course, do not assert that they ever obtained a majority. They contend for the right of the majority to make a constitution, and, although the whole document is so worded as to produce the impression that they believed the constitution had been adopted by a majority; yet they did not dare to risk their reputation upon a positive assertion of it as a fact. The document is thus, though perhaps unintentionally, deceptive. One of the number, an able and distinguished

advocate, has since, repeatedly and publicly, expressed his doubts of the people's constitution ever having obtained such a majority.

Never was there a set of men who placed a more blind confidence in their leaders, than the people's party, or more implicitly followed the dictation of the party organ. We have mentioned the fisheries, as a case, where the most gross misrepresentation was used, to defeat the legal constitution. The following will serve as another instance. It is a copy of one of the numerous hand-bills which were circulated, previous to the vote on that constitution.

“LOOK BEFORE YOU LEAP!

“Opinion of the Attorney-General of the United States in relation to the deeply interesting subject in which the People of this State are now engaged.

“No State in the Union has a right to form and adopt a Constitution containing any article or provision, conflicting with, or in contravention to the Constitution of the United States.

“A Constitution adopted by any State of the Union containing an article or provision conflicting with the Constitution of the United States, would be null and void, and of no effect, because

“A State Constitution to be valid, must not in any article or provision contained in it conflict with the Constitution of the United States, and must be adopted by a majority of the whole people of the State who possess the qualification of Electors.

“When a Constitution is adopted, it is adopted as a *whole*—and any single article or provision contained in it, which is in contravention to the Constitution of the United States, vitiates the *whole* instrument; and the *whole* would be null and void, and of no effect, because it would not be determined, by any authority of the State or of the United States, whether the Constitution could have been adopted if it had not contained an article or provision which induced a portion of the Electors to vote its adoption, who, if it had not contained such article or provision, would have voted its rejection.

“Every citizen of the United States holding appointment under the United States or under any of the individual States

of the Union, who having bound himself by oath or affirmation to support the Constitution of the United States—by voting for the adoption of a Constitution in any State which contains a single article or provision in contravention to the Constitution of the United States would be adjudged to have violated his obligation to support the Constitution of the United States, and lay himself liable to the penalty of perjury.

“The second Article of the Constitution now offered to the people of this State for adoption or rejection is in contravention of the Constitution of the United States: read and judge for yourselves.

THE CONSTITUTION OF THE UNITED STATES,

“ARTICLE 1, *Sec. 8.*—4th Clause,—Declares the powers of Congress—‘To establish an UNIFORM *rule of Naturalization* and uniform laws on the subject of bankruptcies throughout the United States’—

“ARTICLE 4, *Sec. 2.*—1st Clause, is as follows:—‘The citizens of each State shall be entitled to ALL privileges and immunities of citizens in the several States.’

“ARTICLE 6, 3d Clause, is in the following words:—‘The Senators and Representatives before mentioned, (of the U. States) and the members of the several State Legislatures, and all executive and judicial officers both of the United States and of the several States, shall be bound by oath or affirmation to support the Constitution of the United States.’

“*Newport, March 19, 1842.*”







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